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Shortfalls in public policy and programme delivery in Northern Ireland relative to the Articles of the UNCRPD

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UNCRPD: Shortfalls in public policy and programme delivery in Northern Ireland relative to the Articles of the UNCRPD

Final Report

2 May 2014

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Contents

Executive summary	14
(i) Introduction	14
(ii) UN Convention on the Rights of Persons with Disabilities context.....	14
(iii) Findings from the initial ‘programmes and policies’ research commissioned in 2010	15
(iv) Terms of reference of this project	15
(iv) Methodology	17
Work package 1: International context.....	17
Work package 2: Northern Ireland context	17
Work package 3: Stakeholder engagement.....	17
Work package 4: Update on policies and programmes	18
Work package 5: Interim Report	18
Work package 6: Final Report	18
(v) Key areas where there are shortfalls in public policies and programmes in Northern Ireland	19
Articles of the UNCRPD where there are shortfalls	19
The Northern Ireland ‘A strategy to improve the lives of people with disabilities: 2012-2015’	20
Northern Ireland policy developments which fall short of the requirements of the UNCRPD	21
1. Introduction	26
2. UN Convention on the Rights of Persons with Disabilities context.....	28
2.1 The United Nations Convention on the Rights of Persons with Disabilities.....	28
2.2 UNCRPD State Party examination.....	29
2.3 UNCRPD Shadow Reporting	30
2.4 UK Initial State Party Report on the UNCRPD	30

3. Northern Ireland context.....	32
3.1 Northern Ireland Executive Contribution to the UK Government Report to the United Nations Committee	32
3.2 The Northern Ireland ‘Strategy to improve the lives of people with disabilities: 2012-2015’	33
4. Project background	35
4.1 Overview of the First Report	35
4.2 Terms of reference of this project	35
Aim	35
Objectives	36
4.3 Project context	36
UNCRPD & UK Government Framework	36
The Independent Mechanism for Northern Ireland and across the UK	37
Disability programmes and policies: How does Northern Ireland measure up? An ‘Update Paper’	38
5. Project methodology.....	39
5.1 Work package 1: International context.....	39
5.2 Work package 2: Northern Ireland context.....	40
5.3 Work package 3: Stakeholder engagement	40
5.4 Work package 4: Update on policies and programmes.....	41
5.5 Work package 5: Interim Report	42
5.6 Work package 6: Final Report.....	42
6. Stakeholder engagement	44
6.1 Overview	44
6.2 Accessing stakeholders	44
6.3 Expert Seminar	46
6.4 Key questions asked	47

6.5 Key themes from stakeholder events	47
Adults with disabilities	48
People with a learning disability	48
Children and young people with disabilities	48
Representatives from disability organisations	49
Expert Seminar	49
7. Key requirements of Articles 5 to 31 UNCRPD and key policy and programmes for delivery on UNCRPD in Northern Ireland	51
7.1 Article 5: Equality and non-discrimination	51
Jurisprudence of the UN Committee on the Rights of Persons with Disabilities	51
The UK State Party Report and the NI Executive Contribution to it	52
Northern Ireland Disability Strategy 2012-2015	53
Reconsideration of key Northern Ireland policies and programmes.....	53
Any significant gaps and shortfalls in Northern Ireland policies and programmes	55
7.2 Article 6: Women with disabilities	58
Jurisprudence of the UN Committee on the Rights of Persons with Disabilities	58
The UK State Party Report and the NI Executive Contribution to it	58
Northern Ireland Disability Strategy 2012-2015	59
Reconsideration of key Northern Ireland policies and programmes.....	59
Stakeholder engagement.....	60
Any significant gaps or shortfalls in Northern Ireland public policy and programmes.....	60
7.3 Article 7: Children with disabilities	60
Jurisprudence of the UN Committee on the Rights of Persons with Disabilities	60
The UK State Party Report and the NI Executive Contribution to it	62
Northern Ireland Disability Strategy 2012-2015	62

Reconsideration of key Northern Ireland policies and programmes.....	63
Stakeholder engagement.....	64
Any significant gaps or shortfalls in Northern Ireland public policy and programmes.....	65
7.4 Article 8: Awareness-raising.....	65
Jurisprudence of the UN Committee on the Rights of Persons with Disabilities ...	65
The UK State Party Report and the NI Executive Contribution to it	66
Northern Ireland Disability Strategy 2012-2015	66
Reconsideration of key Northern Ireland policies and programmes.....	67
Stakeholder engagement.....	68
Any significant gaps or shortfalls in Northern Ireland public policy and programmes.....	69
7.5 Article 9: Accessibility.....	69
Jurisprudence of the UN Committee on the Rights of Persons with Disabilities	69
The UK State Party Report and the NI Executive Contribution to it	71
Northern Ireland Disability Strategy 2012-2015	71
Reconsideration of key Northern Ireland policies and programmes.....	73
Stakeholder engagement.....	74
Any significant gaps or shortfalls in Northern Ireland public policy and programmes.....	75
7.6 Article 10: Right to life	75
Jurisprudence of the UN Committee on the Rights of Persons with Disabilities	75
The UK State Party Report and the NI Executive Contribution to it	76
Northern Ireland Disability Strategy 2012-2015	77
Reconsideration of key Northern Ireland policies and programmes.....	77
Stakeholder engagement.....	79

Any significant gaps or shortfalls in Northern Ireland public policy and programmes.....	79
7.7 Article 11: Situations of risk and humanitarian emergencies.....	79
Jurisprudence of the UN Committee on the Rights of Persons with Disabilities	79
The UK State Party Report and the NI Executive Contribution to it	80
Northern Ireland Disability Strategy 2012-2015	80
Reconsideration of key Northern Ireland policies and programmes.....	81
Stakeholder engagement.....	81
Any significant gaps or shortfalls in Northern Ireland public policy and programmes.....	82
7.8 Article 12: Equal recognition before the law	82
Jurisprudence of the UN Committee on the Rights of Persons with Disabilities	82
UK State Party Report and NI Executive Contribution to it	84
Northern Ireland Disability Strategy 2012-2015	84
Reconsideration of key Northern Ireland policies and programmes.....	85
Stakeholder engagement.....	85
Any significant gaps or shortfalls in Northern Ireland public policy and programmes.....	86
7.9 Article 13: Access to justice	88
Jurisprudence of the UN Committee on the Rights of Persons with Disabilities	88
The UK State Party Report and the NI Executive Contribution to it	88
Northern Ireland Disability Strategy 2012-2015	89
Reconsideration of key Northern Ireland policies and programmes.....	89
Stakeholder engagement.....	91
Any significant gaps or shortfalls in Northern Ireland public policy and programmes.....	91
7.10 Article 14: Liberty and security of person	92

Jurisprudence of the UN Committee on the Rights of Persons with Disabilities	92
UK State Party Report and NI Executive Contribution to it	92
Northern Ireland Disability Strategy 2012-2015	92
Reconsideration of key Northern Ireland policies and programmes.....	93
Stakeholder engagement.....	94
Any significant gaps or shortfalls in Northern Ireland public policy and programmes.....	94
7.11 Article 15: Freedom from torture or cruel, inhuman or degrading treatment or punishment	95
Jurisprudence of the UN Committee on the Rights of Persons with Disabilities	95
UK State Party Report and NI Executive Contribution to it	95
Northern Ireland Disability Strategy 2012-2015	96
Reconsideration of key Northern Ireland policies and programmes.....	96
Stakeholder engagement.....	97
Any significant gaps or shortfalls in Northern Ireland public policy and programmes.....	97
7.12 Article 16: Freedom from exploitation, violence and abuse.....	97
Jurisprudence of the UN Committee on the Rights of Persons with Disabilities	97
UK State Party Report and NI Executive Contribution to it	98
Northern Ireland Disability Strategy 2012-2015	98
Reconsideration of key Northern Ireland policies and programmes.....	99
Stakeholder engagement.....	100
Any significant gaps or shortfalls in Northern Ireland public policy and programmes.....	100
7.13 Article 17: Protecting the integrity of the person.....	101
Jurisprudence of the UN Committee on the Rights of Persons with Disabilities	101

The UK State Party Report and the NI Executive Contribution to it	101
Northern Ireland Disability Strategy 2012-2015	102
Reconsideration of key Northern Ireland policies and programmes.....	102
Stakeholder engagement.....	102
Any significant gaps or shortfalls in Northern Ireland public policy and programmes.....	102
7.14 Article 18: Liberty of movement and nationality	102
Jurisprudence of the UN Committee on the Rights of Persons with Disabilities	102
The UK State Party Report and the NI Executive Contribution to it	102
Northern Ireland Disability Strategy 2012-2015	103
Reconsideration of key Northern Ireland policies and programmes.....	103
Stakeholder engagement.....	103
Any significant gaps or shortfalls in Northern Ireland public policy and programmes.....	103
7.15 Article 19: Living independently and being included in the community	104
Jurisprudence of the UN Committee on the Rights of Persons with Disabilities	104
The UK State Party Report and the NI Executive Contribution to it	104
Northern Ireland Disability Strategy 2012-2015	105
Reconsideration of key Northern Ireland policies and programmes.....	106
Stakeholder engagement.....	107
Any significant gaps or shortfalls in Northern Ireland public policy and programmes.....	107
7.16 Article 20: Personal mobility	108
Jurisprudence of the UN Committee on the Rights of Persons with Disabilities	108

The UK State Party Report and the NI Executive Contribution to it	109
Northern Ireland Disability Strategy 2012-2015	109
Reconsideration of key Northern Ireland policies and programmes.....	110
Stakeholder engagement.....	111
Any significant gaps or shortfalls in Northern Ireland public policy and programmes.....	111
7.17 Article 21: Freedom of expression and opinion, and access to information	112
Jurisprudence of the UN Committee on the Rights of Persons with Disabilities	112
The UK State Party Report and the NI Executive Contribution to it	112
Northern Ireland Disability Strategy 2012-2015	113
Reconsideration of key Northern Ireland policies and programmes.....	113
Stakeholder engagement.....	114
Any significant gaps or shortfalls in Northern Ireland public policy and programmes.....	114
7.18 Article 22: Respect for privacy	115
Jurisprudence of the UN Committee on the Rights of Persons with Disabilities	115
UK State Party Report and NI Executive Contribution to it	115
Northern Ireland Disability Strategy 2012-2015	115
Reconsideration of Key Northern Ireland Policies and Programmes	115
Stakeholder engagement.....	116
Any significant gaps or shortfalls in Northern Ireland public policy and programmes.....	116
7.19 Article 23: Respect for home and the family.....	116
Jurisprudence of the UN Committee on the Rights of Persons with Disabilities	116

The UK State Party Report and the NI Executive Contribution to it	117
Northern Ireland Disability Strategy 2012-2015	117
Reconsideration of Key Northern Ireland Policies and Programmes	118
Stakeholder engagement.....	119
Any Significant Gaps or Shortfalls in Northern Ireland Public Policy and Programmes	119
7.20 Article 24: Education	120
Jurisprudence of the UN Committee on the Rights of Persons with Disabilities	120
The UK State Party Report and the NI Executive Contribution to it	121
Northern Ireland Disability Strategy 2012-2015	122
Reconsideration of key Northern Ireland policies and programmes.....	124
Stakeholder engagement.....	125
Any significant gaps or shortfalls in Northern Ireland public policy and programmes.....	126
7.21 Article 25: Health.....	126
Jurisprudence of the UN Committee on the Rights of Persons with Disabilities	126
UK State Party Report and NI Executive Contribution to it	127
Northern Ireland Disability Strategy 2012-2015	128
Reconsideration of key Northern Ireland policies and programmes.....	129
Stakeholder engagement.....	132
Any significant gaps or shortfalls in Northern Ireland public policy and programmes.....	133
7.22 Article 26: Habilitation and rehabilitation	133
Jurisprudence of the UN Committee on the Rights of Persons with Disabilities	133

The UK State Party Report and the NI Executive Contribution to it	134
Northern Ireland Disability Strategy 2012-2015	134
Reconsideration of key Northern Ireland policies and programmes.....	134
Stakeholder engagement.....	135
Any significant gaps or shortfalls in Northern Ireland public policy and programmes.....	135
7.23 Article 27: Work and employment	135
Jurisprudence of the UN Committee on the Rights of Persons with Disabilities	135
The UK State Party Report and the NI Executive Contribution to it	136
Northern Ireland Disability Strategy 2012-2015	137
Reconsideration of key Northern Ireland policies and programmes.....	138
Stakeholder engagement.....	140
Any significant gaps or shortfalls in Northern Ireland public policy and programmes.....	140
7.24 Article 28: Adequate standard of living and social protection	141
Jurisprudence of the UN Committee on the Rights of Persons with Disabilities	141
The UK State Party Report and the NI Executive Contribution to it	141
Northern Ireland Disability Strategy 2012-2015	142
Reconsideration of Key Northern Ireland Policies and Programmes	143
Stakeholders Engagement	144
Any Significant Gaps or Shortfalls in Northern Ireland Public Policy and Programmes	145
7.25 29: Participation in political and public life.....	147
Jurisprudence of the UN Committee on the Rights of Persons with Disabilities	147

The UK State Party Report and the NI Executive Contribution to it	148
Northern Ireland Disability Strategy 2012-2015	149
Reconsideration of Key Northern Ireland Policies and Programmes	149
Stakeholders Engagement	150
Any significant gaps or shortfalls in Northern Ireland public policy and programmes.....	151
7.26 Article 30: Participation in cultural life, recreation, leisure and sport	151
Jurisprudence of the UN Committee on the Rights of Persons with Disabilities	151
The UK State Party Report and the NI Executive Contribution to it	151
Northern Ireland Disability Strategy 2012-2015	152
Reconsideration of Key Northern Ireland Policies and Programmes	153
Stakeholder engagement.....	153
Any Significant Gaps or Shortfalls in Northern Ireland Public Policy and Programmes	153
7.27 Article 31: Statistics and data collection	154
Jurisprudence of the UN Committee on the Rights of Persons with Disabilities	154
The UK State Party Report and the NI Executive Contribution to it	155
Northern Ireland Disability Strategy 2012-2015	155
Reconsideration of key Northern Ireland policies and programmes.....	155
Stakeholder engagement.....	157
Any significant gaps or shortfalls in Northern Ireland public policy and programmes.....	158
8. Conclusion: Key areas where there are shortfalls in public policies and programmes in Northern Ireland	158
Articles of the UNCRPD where there are shortfalls.....	158

Northern Ireland Policy Developments which fall short of the requirements of the UNCRPD.....	159
Transforming Your Care	160
Northern Ireland Mental Capacity Bill	161
Welfare Reform.....	162
Review of Special Educational Needs and Inclusion	163
The Northern Ireland 'A strategy to improve the lives of people with disabilities: 2012-2015'	164
Concluding comments	166
Bibliography	167
Appendix 1: Glossary of terms	179
Appendix 2: Summary Paper of Interim Findings for Expert Seminar	182
Appendix 3: Focus group topic guides	191
Appendix 4: Presentation at Expert Seminar.....	193
Appendix 5: Presentation at Derry / Londonderry consultation event.....	213

Executive summary

(i) Introduction

In 2010, the Equality Commission for Northern Ireland (ECNI), as part of the Independent Mechanism in Northern Ireland, contracted research to develop an expert paper to set out robust evidence of any substantive shortfalls in public policy and programme delivery in Northern Ireland relative to the key requirements of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD); highlighting any key issues/barriers to full implementation. The report, 'Disability programmes and policies: How does Northern Ireland measure up?' was published by ECNI in 2012¹. The present report was commissioned by the ECNI to update the 2012 Report and to contribute to the evidence base the ECNI will draw upon in its engagement with the examination of the United Kingdom by the UNCRPD in 2014 and 2015.

(ii) UN Convention on the Rights of Persons with Disabilities context

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) was adopted by the UN General Assembly on 13 December 2006 and came into force on 3 May 2008². The UNCRPD comprises 50 articles and its Optional Protocol comprises 18 articles.

Article 35 of the UNCRPD requires each State Party to submit a report to the UN Committee on the Rights of Persons with Disabilities (the UN Committee) outlining the progress made towards the realization of the obligations under the UNCRPD within two years after the Convention's entry into force within the State. Following the submission of a report by a State Party (the State Party Report), the UN Committee presents a list of issues based on the concerns raised by the report to which the State Party is expected to supply a written response. The UN Committee will then

¹ Harper, C, S McClenahan, B Byrne & H Russell (2012) 'Disability Programmes and Policies: How Does Northern Ireland Measure Up?', Belfast: Equality Commission for Northern Ireland.

² As of 1 April 2014, 145 States have ratified the UNCRPD and there have been 158 signatories.

The UK signed the UNCRPD at the first opportunity on 30 March 2007 and ratified on 8 June 2009, albeit with reservations relating to employment in the armed forces (Article 27), liberty of movement (Article 19), education (Article 24) and equal recognition before the law (Article 12).

meet with the State Party delegation to provide Concluding Observations and recommendations on the report. The State Party will be expected to provide a progress report within four years or at the request of the UN Committee.

The United Kingdom (UK) submitted its initial State Party Report in 2011 and the UN Committee is due to draft a list of issues at its pre-sessional working group meeting on 10 October 2014, with the expectation that the UK will be examined by the UN Committee in 2015.

[\(iii\) Findings from the initial 'programmes and policies' research commissioned in 2010](#)

The 'Programmes and Policies' research (undertaken by the Centre on Human Rights for People with Disabilities at Disability Action and published by the Commission early in 2012) identified a range of shortfalls and gaps in key policies and programmes relevant to the articles of the UNCPRD. The research also highlighted three key (cross cutting) areas for action fundamental to fulfilling the implementation, monitoring and accessibility requirements of the UNCPRD. These were:

- Awareness-raising (Article 8);
- Participation in political and public life (Article 29); and
- Access to information (Article 9 and 21) and Statistics and data collection (Article 31).

[\(iv\) Terms of reference of this project](#)

The aim and objectives of the project are as follows:

[Aim](#)

The aim of the project, as outlined in the project terms of reference, was to produce 'an 'expert paper', supplementing the 'Programmes and Policies' work commissioned in 2010, that takes account of socio-economic, policy and

programme developments since then, to present robust evidence of any substantive shortfalls in public policy and programme delivery in Northern Ireland relative to the key requirements of the UNCRPD; highlighting any key issues / barriers to full implementation.’³

Objectives

The objectives of the project were as follows:

‘Implicit in the Convention are three distinct obligations on all State Parties, namely the obligations to *respect, protect and fulfil* the rights of persons with disabilities. Adopting the three obligations as an overarching framework, the project should address the following:

1. Building on the ‘Programmes and Policies’ research commissioned in 2010, an analysis of the socio-economic, policy and programme developments since that work was undertaken.
2. An analysis of the evidence and arguments presented in the OFMDFM [Office of First Minister and Deputy First Minister] authored jurisdictional report and the subsequent UK State Party report (2011) as submitted to the UN Committee.
3. Full involvement of those with disabilities, their representative organisations and key stakeholders in initially informing and subsequently refining the above analysis and subsequent recommendations
4. Taking account of the work commissioned in 2010 and this work, provide a distillation of any current substantive shortfalls between public policy and programme delivery in Northern Ireland relative to the articles of the UNCRPD; along with recommendations on a sub-set of key themes to be raised to the attention of the UN Committee and/or the Northern Ireland Executive for prompt action.’⁴

³ RES 1314-05 UNCRPD Project Initiation Document.

⁴ *Ibid.*

(iv) Methodology

The method which the project adopted to deliver on the objectives consisted of 6 work packages. All of the work in the 6 work packages was carried out to provide an update to the earlier research on which the present research study is based. Work on each of the work packages overlapped, and therefore was not completed sequentially.

Work package 1: International context

Work package 1 of the Project reviewed and determined the current international context for determining shortfalls in public policy and programme delivery in Northern Ireland relative to the articles of the UNCRPD. This included an analysis of the jurisprudence and commentary by the UN Committee on the Rights of Persons with Disabilities since 2010; the UK State Party Report; and the Northern Ireland Executive contribution to the UK State Party Report.

Work package 2: Northern Ireland context

Work package 2 of the Project looked at the broader context in Northern Ireland relative to the overall assessment of compliance with the UNCRPD.

Work package 3: Stakeholder engagement

Work package 3 of the Project consisted of direct engagement with people with disabilities, their representative organisations and key stakeholders. This work package consisted of consultation with 4 stakeholder groups as follows:

1. Adults with disabilities;
2. People with learning disabilities;
3. Children and young people with disabilities; and
4. Disability organisations.

Work package 4: Update on policies and programmes

Work package 4 of the Project consisted of an analysis of the policy and programme developments since the 2012 Report. It was structured article by article of the UNCRPD and examined articles 5 to 31 only. This analysis distilled current (taken as meaning 'as of 31 December 2013') substantive shortfalls between public policies and programme delivery in Northern Ireland relative to articles 5 to 31 inclusive of the UNCRPD.

Work package 5: Interim Report

Work package 5 of the Project consisted of the production of the Interim Report of the findings. This work package was to ensure that the project was progressing appropriately.

Work package 6: Final Report

Work package 6 of the Project involved the refinement and revision of the analyses and recommendations of the Interim Report into a Draft Final Report in the light of the Expert Seminar and feedback received from ECNI on the content of the Interim Report.

The present research is intended to supplement, rather than replace the research initiated in 2010. The work commissioned in 2010, and published in 2012, is used as a starting point for further consideration, but it will not be subjected to systematic critique by this project. The present research is also not intended to comprise a legal opinion and focuses on an assessment of policies and programmes.

The present research does not focus on the effectiveness of any processes put in place by government to implement the UNCRPD, but rather where policy or programme outputs do not meet with the requirements of the UNCRPD.

(v) Key areas where there are shortfalls in public policies and programmes in Northern Ireland

There are a range of articles of the UNCPRD where there are shortfalls in delivery in Northern Ireland with respect to policies and programmes. These are discussed article by article in the present report.

Articles of the UNCPRD where there are shortfalls

This research has found that there continues to be gaps in delivery in the three priority areas identified in the 2012 research, namely with respect to the following articles:

- Awareness-raising (Article 8)
- Participation in political and public life (Article 29); and
- Access to information (Article 9 and 21) and Statistics and data collection (Article 31).

In addition, substantive shortfalls have been identified with respect to the following articles:

- Article 5: Equality and non-discrimination;
- Article 12: Equal recognition before the law;
- Article 19: Living independently and being included in the community;
- Article 24: Education;
- Article 25: Health; and
- Article 28: Adequate standard of living and social protection

Information about the shortfalls with respect to these articles and the reasoning behind this is provided in the relevant sections of the body of the present report.

The present research report has also highlighted the extent to which the articles of the UNCRPD are addressed by 'A strategy to improve the lives of people with disabilities: 2012-2015' (hereafter referred to as the Disability Strategy). The aim of the Disability Strategy is to help Northern Ireland fulfil its obligations under the UNCRPD 'by establishing a framework to implement the Convention.'⁵ The core of the Disability Strategy is the table provided as Appendix 1 of the Disability Strategy, which is entitled 'Programme for Government Commitments, UNCRPD articles, Strategic Priorities and Key Performance Measures' and seeks to relate the articles of the UNCRPD to the priorities of the Disability Strategy and Programme for Government 2011-2015 (PfG). The table includes a column which seeks to explain how each PfG commitment 'will address the needs of people with disabilities'. However, a number of issues have been identified.

The Disability Strategy defines itself with reference to the 'Report of the Promoting Social Inclusion Working Group on Disability' (PSI) which was developed prior to the UK's ratification of the UNCRPD.⁶ The Disability Strategy thus effectively rests on two foundations: the PSI and UNCRPD. This means that it is not always sufficiently or primarily focused on the UNCRPD to be considered a strategy for the implementation of the UNCRPD.

The Disability Strategy contains a number of significant omissions. For example, the Disability Strategy notes the importance of Article 6 of the UNCRPD with respect to *women with disabilities*. However, no reference is made to Article 6 on *women with disabilities* in the Disability Strategy's table outlining how the Northern Ireland (NI) Executive was meeting its obligations under the UNCRPD. A similar issue arises with respect to Article 7 on *Children with disabilities* which receives only brief references in the Appendix.

⁵ Office of the First Minister and Deputy First Minister (2013) 'A Strategy to improve the lives of people with disabilities 2012-2015', Belfast: OFMDFM, p. 6. The PSI group was established in November 2004 and presented its report on 3rd December 2009.

⁶ Office of the First Minister and Deputy First Minister (2009) 'Report of the Promoting Social Inclusion Working Group on Disability', Belfast: OFMDFM.

Article 10 on the *Right to life* is not mentioned in the Disability Strategy: a fact that demonstrates how inadequate it is as a strategy for implementing the UNCRPD. This lack of concern for key human rights is underlined by the lack of reference to Article 17 on *Protecting the integrity of the person*.

In general, the Appendix of the Disability Strategy reads as if the articles of the UNCRPD have been allocated to Programme for Government Commitments and existing or planned programmes without any consideration of the actual obligations and rights contained in those articles. The connection between the PfG Commitments or programmes and particular articles of the UNCRPD is weak, unclear or, in some cases, not actual.⁷

To deliver on the obligations of the NI Executive with respect to the UNCRPD, the Disability Strategy should specifically address those obligations and rights. Simply referencing general programmes and Commitments to article numbers of the UNCRPD will not necessarily generate policies and programmes likely to deliver on the UNCRPD: the Disability Strategy should link actions to articles, not articles to actions. No further actions specific to each article are identified and it is not clear how each strategic priority is to be achieved in practice. There is a significant risk that the Disability Strategy will appear to be grounded in the rights and obligations of the UNCRPD, when in fact it is not. The appearance of respect for human rights without the substance is not a desirable situation, nor one which the UN Committee is likely to welcome.⁸

Northern Ireland policy developments which fall short of the requirements of the UNCRPD

The project team have identified key policy and programme areas which it is felt have significant shortfalls (or potentially so) in Northern Ireland with respect to the UNCRPD. In doing so, the same three criteria for the identification of key areas have been applied as were applied in the 2012 research.⁹

⁷ See the consideration of articles 5-31 in chapter 7 below.

⁸ It should be noted that this analysis reflects an analysis of articles 5 to 31 as discussed in chapter 7 above.

⁹ These criteria are: the issue is one of the most intractable or persistent and/or one on which little progress is being made; the issue is disproportionately damaging i.e. the group affected may be small

The key areas of Northern Ireland policy development which have been identified are the following:

- The Transforming Your Care policy which aims to reform health and social care in Northern Ireland;
- The Northern Ireland Mental Capacity Bill;
- The Welfare Reform programme; and
- The Special Educational Needs and Inclusion Review.

Transforming Your Care

Transforming Your Care is likely to have a significant impact on the lives of a great many people with disabilities in Northern Ireland. It engages a range of articles of the UNCPRD, including:

- Article 10: Right to life;
- Article 19: Living independently and being included in the community;
- Article 25: Health; and
- Article 26: Habilitation and rehabilitation.

Given the concerns identified in the 2012 Report which have as yet not been adequately addressed through significant progress, the introduction of such a wide ranging reform of health and social care services is a cause for concern. Given the extent to which the lives of many disabled people are embedded in the health and social care system, it has the potential to both impact on a very large number of disabled people and for that impact to be substantial for many individuals. In large measure 'Transforming Your Care' engages the social and economic right to health which is progressively realisable within available resources. This means that 'available resources' constitutes a valid limit on the extent to which the right can be realised at the present moment, but it cannot mean a 'falling back' or retrogression with respect to the right.

but the impact substantial; and/or the 'direction of travel' is negative i.e. existing evidence shows a worsening experience for disabled people. See Harper, C, S McClenahan, B Byrne & H Russell (2012) 'Disability Programmes and Policies: How Does Northern Ireland Measure Up?', Belfast: Equality Commission for Northern Ireland, pp. 261-63.

Northern Ireland Mental Capacity Bill

The Northern Ireland Mental Capacity Bill is likely to have significant impact on the lives of a great many people with disabilities in Northern Ireland. It engages a range of articles of the UNCRPD, including:

- Article 5: Equality and non-discrimination;
- Article 7: Children with disabilities;
- Article 8: Awareness-raising;
- Article 12: Equal recognition before the law;
- Article 14: Liberty and security of person;
- Article 16: Freedom from exploitation, violence and abuse;
- Article 17: Protecting the integrity of the person;
- Article 19: Living independently and being included in the community; and
- Article 25: Health.

Attitudes towards people with disabilities in Northern Ireland remain paternalistic and full implementation of Article 12 (*Equal recognition before the law*) is a key delivery for liberating people with disabilities from lesser lives as a result of such paternalistic attitudes. Having its origins in the Bamford Review of Mental Health and Learning Disability¹⁰, the Mental Capacity Bill seeks to challenge the paternalistic attitudes currently enshrined in mental health law.¹¹ It is clear that Article 12 requires a range of policies and programmes, including in connection with the implementation of the Mental Capacity Bill. For the Mental Capacity Bill to be a means of promoting and protecting the rights of people with disabilities in Northern Ireland, such programmes need to be adequately resourced. Without the proper resourcing of such services, it is possible that the Mental Capacity Bill will create a worsening experience for disabled people as they will be left more to make decisions themselves in all areas of their life, yet they will not be receiving the support necessary to enable them to realise their mental capacity to make such decisions.

¹⁰ See in particular the Department of Health, Social Services & Public Safety (2007) 'Bamford Review Report: A comprehensive legal framework', Belfast: DHSSPS, available at <http://www.dhsspsni.gov.uk/legal-issue-comprehensive-framework.pdf>.

¹¹ The draft 'civil' or 'core' provisions of the Bill were released for public consultation as this report was being completed. The consultation documents are available at: <http://www.dhsspsni.gov.uk/showconsultations?txtid=68523>

Welfare Reform

The Welfare Reform programme is likely to have significant impact on the lives of a great many people with disabilities in Northern Ireland. With its clear emphasis on reducing welfare expenditure and thereby potentially deep negative impact on the income levels of many disabled people, its implementation has an impact on a very wide range of articles of the UNCRPD, including:

- Article 5: Equality and non-discrimination;
- Article 8: Awareness-raising;
- Article 19: Living independently and being included in the community;
- Article 20: Personal mobility;
- Article 24: Education;
- Article 28: Adequate standard of living and social protection;
- Article 29: Participation in political and public life; and
- Article 30: Participation in cultural life, recreation, leisure and sport.

Full implementation of Article 28 is clearly critical for many aspects of people with disabilities' lives. There is a risk that the Welfare Reform programme is potentially retrogressive. Consideration should be given to the additional costs of disability that can emerge as well as any additional implications that may arise due to the intersection between disability and childhood (that is, on families with children with disabilities) and the intersection between disability and gender (that is, on women with disabilities).

Review of Special Educational Needs and Inclusion

There is no evidence of a move, towards inclusive education for children with disabilities in Northern Ireland education policy as required by Article 24 (*Education*) of the UNCRPD. This is in spite of the concern raised in the 2012 research that the Department of Education's policy proposals with respect to Special Educational Needs and Inclusion would weaken the existing entitlements of children with

disabilities.¹² The continued segregation of children with disabilities engages a range of rights under the UNCRPD, including:

- Article 5: Equality and non-discrimination;
- Article 7: Children with disabilities;
- Article 8: Awareness-raising;
- Article 9: Accessibility;
- Article 19: Living independently and being included in the community;
- Article 23: Respect for home and the family;
- Article 24: Education; and
- Article 27: Work and employment.

Children and young people with disabilities continue to face extensive barriers in their quest for educational attainment and fulfilment. Article 24 clearly requires States to guarantee a right to inclusive education. It is important that the right to inclusive education does not become exclusionary or inconsistent in its applicability to and between children and young people with disabilities. Inclusive education needs to be appropriately resourced – in both financial and human terms. It is also important that teachers are provided with training and that children and young people with disabilities are able to participate in the development and implementation of inclusive education policies. In light of this, there is a risk that the existing policy proposals will dilute existing entitlements and exacerbate existing barriers for children and young people with disabilities through, for example, the selective nature of Coordinated Support Plans (CSPs), the lack of meaningful involvement of children and young people in the development of the policy proposals, and differentials rights to transitions planning service – all of which in terms of the UNCRPD would mean retrogression with respect to the human right to education of children with disabilities in Northern Ireland.

¹² Harper, C, S McClenahan, B Byrne & H Russell (2012) 'Disability Programmes and Policies: How Does Northern Ireland Measure Up?', Belfast: Equality Commission for Northern Ireland, pp.184-195.

1. Introduction

In 2010, the Equality Commission for Northern Ireland (ECNI), as part of the Independent Mechanism in Northern Ireland (IMNI) (which also includes the Northern Ireland Human Rights Commission (NIHRC)), contracted research to develop an expert paper to set out robust evidence of any substantive shortfalls in public policy and programme delivery in Northern Ireland relative to the key requirements of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD); highlighting any key issues / barriers to full implementation. The present report was commissioned by the ECNI to update the 2012 research and to contribute to the evidence base IMNI will draw upon in its engagement with the examination of the United Kingdom by the UN Committee on the Rights of Persons with Disabilities in 2014 and 2015. It is intended that the present research will assist IMNI in the development of:

- Potential topics to be raised to the attention of the UN Committee and subsequently the UK State Party in a 2014 'List of Issues' paper;
- Submissions to the UN Committee, by the UK Independent Mechanism (UKIM)¹³, to assist in its examination of the UK State Party; and
- Engagement with the Executive, Departments and Stakeholders in Northern Ireland regarding the advancement of the UNCRPD and equality for those with disabilities in Northern Ireland.

Chapter 2 of the present report provides background information about the UNCRPD and the process of examination of State Reports by the UN Committee on the Rights of Persons with Disabilities.

Chapter 3 provides some of the Northern Ireland context for the research in terms of the Northern Ireland Executive Contribution to the UK State Party Report and the Northern Ireland 'A strategy to improve the lives of people with disabilities: 2012-

¹³ The Equality and Human Rights Commission (EHRC) together with the Scottish Human Rights Commission (SHRC), the Northern Ireland Human Rights Commission (NIHR) and the Equality Commission for Northern Ireland (ECNI) are the four designated independent bodies to promote, protect and monitor the implementation of the Convention in the UK. Collectively, the Commissions are the UK Independent Mechanism (UKIM) for the Convention. Source: http://www.equalityhumanrights.com/uploaded_files/humanrights/uncrdp_mar2012.pdf

2015' (hereafter referred to as the Disability Strategy) which is a key document for the implementation of the UNCRPD within Northern Ireland.

Chapters 4 and 5 provide background on this research project and the methodology it followed.

Chapter 6 provides information about how the project engaged a range of key stakeholders, including people with disabilities.

Chapter 7 provides an analysis of current substantive shortfalls between public policy and programme delivery in Northern Ireland relative to the articles of the UNCRPD. This analysis builds on the research conducted in 2010.

Chapter 8 provides an overview of key articles of the UNCRPD and key policy and programme areas in Northern Ireland where there are shortfalls or gaps in implementation or potentially so.

2. UN Convention on the Rights of Persons with Disabilities context

2.1 The United Nations Convention on the Rights of Persons with Disabilities

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) was adopted by the UN General Assembly on 13 December 2006 and came into force on 3 May 2008.¹⁴ The first human rights treaty of the 21st century, the UNCRPD has placed the spotlight firmly upon the breadth and depth of exclusionary and oppressive practices experienced by people with disabilities and which had hitherto been rendered invisible by an 'able-bodied' human rights discourse. The awakening of a disability movement throughout the latter part of the 20th century and its subsequent prominent role in shaping the UNCRPD during the treaty negotiation process has shaken the corporeal foundations on which society is supposedly based; that of a so-called 'normal' homogenous population, whose complete and functioning corporeality is the yardstick against which all born into our society are measured. The development of a thematic human rights treaty is indicative of the increasing recognition accorded to the complexity of disability issues and the conclusion reached by the international community that the difference of disability is such that it has not been, and cannot be, effectively addressed by so called 'mainstream' human rights treaties. The marrying of disability and human rights discourse, and the challenges these have posed to the discourses of each other, has prompted valuable scholarship on a range of issues pertaining to the UNCRPD.¹⁵

¹⁴ As of 1 April 2014, 145 States have ratified the UNCRPD and there have been 158 signatories.

Seventy-nine States have ratified the Optional Protocol and there have been 92 signatories. The UNCRPD came into force on 3 May 2008, 30 days after ratification by Ecuador, the 20th State. The UK signed the UNCRPD at the first opportunity on 30 March 2007 and ratified on 8 June 2009, albeit with reservations relating to employment in the armed forces (Article 27), liberty of movement (Article 19), education (Article 24) and equal recognition before the law (Article 12). The Optional Protocol also came into force on 3 May 2008 and the UK ratified the Protocol on 7 August 2009.

¹⁵ See for example Megret, F (2008) 'The Disabilities Convention: Human Rights of Persons with Disabilities or Disability Rights', 30 *Human Rights Quarterly* 494; Kayness, R & P French (2008) 'Out of the Darkness, Into the Light? Introducing the CRPD', 8 *Human Rights Law Review* 1; Arnardottir, OM & G Quinn (Eds) *The UN Convention on the Rights of Persons with Disabilities*. Leiden: Martinus Nijhoff Publishers.

The UNCRPD is structured in a similar way to other United Nations Conventions, yet as the first textual explication of the rights of both adults and children with disabilities in an international human rights treaty, the UNCRPD has been variously hailed as ‘ground breaking’,¹⁶ ‘historic and pathbreaking’,¹⁷ and the ‘dawn of a new era’.¹⁸

The UNCRPD comprises 50 articles and its Optional Protocol comprises 18 articles. The treaty begins with a series of introductory (Preamble) and interpretive articles (articles 1 and 2); continues with general principles and obligations (articles 3 to 9), substantive rights (articles 10 to 30), and establishes implementation and monitoring processes (articles 31 to 40). It also sets out the rules which govern the operation of the UNCRPD, such as how States become party to the UNCRPD and when it will come into force (articles 41 to 50). The UNCRPD contains obligations on state parties to respect, protect and fulfil the human rights of disabled people. Through the Optional Protocol, an individual complaints procedure is established, allowing individuals and groups of individuals to raise complaints with the treaty body where they have exhausted domestic and regional remedies. It also establishes an inquiry procedure in relation to gross or systematic violations of the rights contained in the UNCRPD. The UNCRPD adopts a holistic approach and contains a range of civil, political, economic, social and cultural rights. While many of the rights specified in the UNCRPD are also specified in other human rights instruments, the UNCRPD generally focuses on the actions that States Parties must take to ensure that people with disabilities enjoy such rights on an equal basis with others.

2.2 UNCRPD State Party examination

The UNCRPD is an international treaty which does not form part of the domestic law of the UK. This means that monitoring is in many respects dependent on an

¹⁶ Waddington, L (2008) ‘Breaking new ground: The implications of ratification of the UN Convention on the Rights of Persons with Disabilities for the European community’ in Arnardottir, OM & G Quinn (Eds) *The UN Convention on the Rights of Persons with Disabilities*, Leiden: Martinus Nijhoff Publishers, p.111.

¹⁷ Melish, TJ (2007) ‘The UN Disability Convention: Historic process, strong prospects, and why the U.S. should ratify’, *Human Rights Brief* 14, no. 2: 37–47, p.37.

¹⁸ United Nations Secretary General (2006) ‘Official statement of the UN Secretary General: Secretary General hails adoption of landmark Convention on the Rights of Persons with Disabilities’, Geneva: United Nations Secretary General, p.13.

international process which lacks formal enforcement mechanisms. Article 35 of the UNCRPD requires each State Party (that is, a state which has agreed to be bound by the Convention) to submit a report to the UN Committee on the Rights of Persons with Disabilities outlining the progress made towards the realization of the obligations under the UNCRPD within two years after the UNCRPD's entry into force within the State.¹⁹ Following the submission of the State Party Report, the UN Committee presents a list of issues based on the concerns raised by the report to which the State Party is expected to supply a written response. The UN Committee then meets with the State Party delegation to explore issues with a view to ultimately providing Concluding Observations and Recommendations in the light of the State Report. The State Party is expected to provide a progress report within four years or at the request of the UN Committee. The UK submitted its initial report in 2011 and the UN Committee is due to draft a list of issues at its pre-sessional working group meeting on 10 October 2014, with the expectation that the UK will be examined by the UN Committee in April 2015.

2.3 UNCRPD Shadow Reporting

Civil society organisations (including disabled people's organisations) are encouraged to submit their own reports to the UN Committee in order to ensure that the UN Committee receives a more balanced view of the State's achievements pertaining to disability rights. The authors of the shadow report may choose to coordinate with the Independent Mechanism (ECNI and NIHRC in Northern Ireland) so as not to overlap too much on identifying the principal concerns for civil society.²⁰

2.4 UK Initial State Party Report on the UNCRPD

The UK State Party Report, originally submitted in 2011, describes how the UNCRPD is being implemented domestically and outlines the approach to building upon existing legislation and policies to deliver equality for people with disabilities. It

¹⁹ See Appendix One (Glossary of Human Rights Terms) for detail on what this means.

²⁰ Theytaz-Bergman, L & S Trömel (2010) 'Effective Use of International Human Rights Monitoring Mechanisms to Protect the Rights of Persons with Disabilities', International Disability Alliance, p.20.

states the Government's intentions to remove barriers to social and economic participation faced by disabled people and focuses on inclusion and mainstreaming (with additional support available as required). It also commits to improving the involvement of disabled people in making decisions that affect their lives (including in determining policies and programmes).²¹ The UK State Party Report addresses how the State sees itself as meeting its obligations under each article of the UNCRPD and identifies differences between Northern Ireland, England, Scotland, and Wales as appropriate. It is possible that the UK State Party will be examined by the UN Committee during its 13th Session which will be held April 2015.

²¹ CRPD/C/GBR/1 (2011) 'Consideration of Reports Submitted by States Parties under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland', at para 1-3.

3. Northern Ireland context

3.1 Northern Ireland Executive Contribution to the UK Government Report to the United Nations Committee

The 'UK Initial Report on the UN Convention on the Rights of Persons with Disabilities' covers articles 5 to 33. However, the 'Northern Ireland Executive's Contribution to the UK Government Report to the UN Committee' (hereafter referred to as the 'NI Executive Contribution') submitted in 2011²² did not make reference to the following articles:

- Article 11: Situations of risk and humanitarian emergencies;
- Article 15: Freedom from torture or cruel, inhuman or degrading treatment or punishment;
- Article 17: Protecting the integrity of the person;
- Article 18: Liberty of movement and nationality;
- Article 21: Freedom of expression and opinion, and access to information;
- Article 22: Respect for privacy;
- Article 23: Respect for home and the family;
- Article 26: Habilitation and rehabilitation;
- Article 28: Adequate standard of living and social protection;
- Article 29: Participation in political and public life;
- Article 31: Statistics and data collection;
- Article 32: International cooperation; and
- Article 33: National implementation and monitoring.

The lack of consideration of articles 21, 28, 29, and 31 are particularly worrying since these have all been highlighted as of particular importance in the present research.²³

It is important to note that aspects of at least some of the articles may well engage matters which are not devolved (for instance, articles 18 and 32). However, the

²² Available at:

http://www.ofmdfmni.gov.uk/executives_contribution_to_the_uk_government_report_to_the_united_nations_committee_-_amended.pdf

²³ See Section 8 of this report for additional information.

majority of the articles do contain rights and obligations, delivery on which are clearly devolved to the Northern Ireland Assembly and Northern Ireland Executive. The UNCPRD requires that a report by a State Party be 'a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress made in that regard' (Article 35). The failure on the part of the NI Executive to comment on 13 articles of the UNCPRD demonstrates that its contribution is not 'comprehensive'.

The Northern Ireland Executive's Contribution cannot reasonably be seen as meeting the reporting obligations of Northern Ireland under the UNCPRD as a devolved region of the United Kingdom. The NI Executive Contribution could usefully be updated in advance of the examination of UK by the UN Committee. The NI Executive Contribution for the next examination should be more comprehensive in explicitly addressing every article of the UNCPRD. It should also address how the policies and programmes will achieve the objectives of the article/s in question and not just what the policy or programme is.²⁴

3.2 The Northern Ireland 'Strategy to improve the lives of people with disabilities: 2012-2015'

The Ministerial statement at the opening of 'A strategy to improve the lives of people with disabilities: 2012 to 2015' (hereafter referred to as the 'Disability Strategy') acknowledges 'our responsibilities to deliver the commitments in the United Nations Convention on the Rights of Persons with Disabilities'.²⁵ The Disability Strategy further affirms that the 'Executive is committed to delivering on the requirements of the UN Convention on the Rights of Persons with Disabilities'.²⁶ It also positions itself with respect to the UNCPRD and the state party reporting process in the following terms:

'A key development in protecting the rights of people with a disability has been the ratification of the United Nations Convention on the Rights of

²⁴ See Section 8 of this report for additional information.

²⁵ Office of the First Minister and Deputy First Minister (2013) 'A Strategy to improve the lives of people with disabilities 2012-2015', Belfast: OFMDFM, p. 3.

²⁶ *Ibid*, p.5.

Persons with Disabilities (UNCPRD) and its subsequent implementation. The UNCPRD requires Government to report on measures it has taken to give effect to its obligations under the UNCPRD. In line with this, the disability strategy references the appropriate articles of the UNCPRD. This will provide a mechanism for future reporting on the Government's obligations under the UNCPRD and allow clearer comparison of our progress locally against national and international standards.

Member countries which signed and ratified the UNCPRD must promote, protect and ensure full and equal enjoyment of all human rights by all persons with disabilities. It applies to everyone with a disability and covers all areas of life including education, employment, health, culture, liberty, and accessibility. The UK Government was required to submit a comprehensive report by July 2011 on measures taken to meet its obligations. The Executive's contribution to the Report was also published on the Office of First Minister and Deputy First Minister (OFMDFM) website.

In 2011, in the Northern Ireland Executive's Contribution to the UK Government Response to the UN Convention on the Rights of Persons with Disabilities we confirmed that the PSI [Report on the Promoting Social Inclusion Working Group on Disability] Strategy will help Northern Ireland fulfil its obligations under the Convention by establishing a framework to implement the Convention. This Strategy takes forward that commitment.²⁷

The Disability Strategy also defines itself with reference to the 'Report of the Promoting Social Inclusion Working Group on Disability' (PSI).²⁸

The core of the Disability Strategy is the table provided as Appendix 1 of the document, which is entitled 'Programme for Government Commitments, UNCPRD articles, Strategic Priorities and Key Performance Measures' and seeks to relate the articles of the UNCPRD to the priorities of the Disability Strategy and Programme for Government 2011-2015 (PfG). The table includes a column which seeks to explain how each PfG commitment 'will address the needs of people with disabilities'. These are identified in respect of each article in chapter 7 and discussed further in chapter 8.

²⁷ *Ibid*, p. 6.

²⁸ Office of the First Minister and Deputy First Minister (2009) 'Report of the Promoting Social Inclusion Working Group on Disability', Belfast: OFMDFM.

4. Project background

4.1 Overview of the First Report

In 2010, the ECNI, as part of the Independent Mechanism in Northern Ireland, contracted research to develop an expert paper to set out robust evidence of any substantive shortfalls in public policy and programme delivery in Northern Ireland relative to the key requirements of the UNCRPD; highlighting any key issues / barriers to full implementation. This ‘Programmes and Policies’ research (undertaken by the Centre on Human Rights for People with Disabilities and published by the Commission early in 2012) identified a range of shortfalls and gaps in key policies and programmes relevant to the articles of the UNCRPD. The research also highlighted three key (cross cutting) areas for action fundamental to fulfilling the implementation, monitoring and accessibility requirements of the UNCRPD. These were:

- Awareness-raising (Article 8);
- Participation in political and public life (Article 29); and
- Access to information (Article 9 and 21) and Statistics and data collection (Article 31).

4.2 Terms of reference of this project

The aim and objectives of the project are as follows:

Aim

The aim of the project, as outlined in the project terms of reference, was to produce

‘an ‘expert paper’, supplementing the ‘Programmes and Policies’ work commissioned in 2010, that takes account of socio-economic, policy and programme developments since then, to present robust evidence of any substantive shortfalls in public policy and programme delivery in Northern Ireland relative to the key requirements of the UNCRPD; highlighting any key issues / barriers to full implementation.’²⁹

²⁹ RES 1314-05 UNCRPD Project Initiation Document.

Objectives

The objectives of the project were as follows:

‘Implicit in the Convention are three distinct obligations on all State Parties, namely the obligations to *respect, protect and fulfil* the rights of persons with disabilities. Adopting the three obligations as an overarching framework, the project should address the following:

1. Building on the ‘Programmes and Policies’ research commissioned in 2010, an analysis of the socio-economic, policy and programme developments since that work was undertaken.
2. An analysis of the evidence and arguments presented in the OFMDFM authored jurisdictional report and the subsequent UK State Party report (2011) as submitted to the UN Committee.
3. Full involvement of those with disabilities, their representative organisations and key stakeholders in initially informing and subsequently refining the above analysis and subsequent recommendations.
4. Taking account of the work commissioned in 2010 and this work, provide a distillation of any current substantive shortfalls between public policy and programme delivery in Northern Ireland relative to the articles of the UNCRPD; along with recommendations on a sub-set of key themes to be raised to the attention of the UN Committee and/or the Northern Ireland Executive for prompt action.³⁰

4.3 Project context

UNCRPD & UK Government Framework

The UNCRPD is a legally binding instrument which sets out the legal obligations on State Parties to ‘promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to

³⁰ RES 1314-05 UNCRPD Project Initiation Document.

promote respect for their inherent dignity’.³¹ Article 33(1) of the UNCRPD states that:

‘States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels’.

Within the UK Government, the Office for Disability Issues (ODI) is the *focal point* with responsibility for coordinating implementation of the UNCRPD. The ODI works closely with other government departments and the devolved administrations in Scotland, Wales and Northern Ireland on issues around the implementation, monitoring and reporting of the UNCRPD. The ODI is responsible for coordinating and producing the State’s periodic reports (hereafter ‘UK State Party Report’). In Northern Ireland, the Office of the First Minister and deputy First Minister (OFMDFM) is the *focal point* for coordinating the implementation of the UNCRPD.

The Independent Mechanism for Northern Ireland and across the UK

Article 33(2) of the UNCRPD requires State Parties to establish ‘a framework, including one or more independent mechanisms... to promote, protect and monitor implementation of the present Convention’. The Northern Ireland Human Rights Commission (NIHRC) and the Equality Commission for Northern Ireland (ECNI) have been jointly designated as the Independent Mechanism in Northern Ireland (IMNI). The aforementioned bodies, along with the Equality and Human Rights Commission (EHRC) and the Scottish Human Rights Commission (SHRC), also constitute the UK Independent Mechanism (UKIM). UKIM intends to produce a ‘List of Issues’ and a UK Parallel Report for consideration by the UN Committee and stakeholders. This UK Parallel Report will assess the measures taken by the State Party to give effect to its obligations under the present UNCRPD and consider the extent to which UK legislation, policy and programmes implement the UNCRPD.

³¹ United Nations Convention on the Rights of Persons with Disabilities 2006, Article 1.

Disability programmes and policies: How does Northern Ireland measure up? An 'Update Paper'

A rapidly changing civil, political, social, economic and cultural landscape has been observed throughout the UK, including Northern Ireland, since the publication of the earlier research in 2012. Policies and programmes which may have a significant impact on the rights of disabled people are being developed and/or implemented.

To inform the anticipated April 2015 UN Committee examination of the UK State Party, IMNI wish to gather further up-to-date information to supplement that previously gathered. It is intended that the update paper, alongside other information, will assist the Independent Mechanism for Northern Ireland, in the development of:

- Potential topics to be raised to the attention of the UN Committee and subsequently the UK State Party in a 2014 'List of Issues' paper;
- Submissions to the UN Committee, by the UK Independent Mechanism, to assist in its examination of the UK State Party; and

Engagement with the Executive, Departments and Stakeholders in Northern Ireland regarding the advancement of the UNCRPD and equality for those with disabilities in Northern Ireland.

5. Project methodology

The method which the project adopted to deliver on the objectives consists of 6 Work Packages as indicated below. All of the work in the 6 Work Packages outlined below was carried out to provide an update to the earlier research on which the present research study is based. Progress on each of the Work Packages overlapped, and was not completed sequentially.

5.1 Work package 1: International context

Work package 1 of the Project reviewed and determined the current international context for determining shortfalls in public policy and programme delivery in Northern Ireland relative to the articles of the UNCPRD. This work comprised 4 elements:

1. An analysis of the Lists of Issues and Concluding Observations issued by the UN Committee on the Rights of Persons with Disabilities since 2010. When the research was conducted for the 2012 Report, although States had submitted Reports to the UN Committee, none had been examined. To date 10 State Parties have been examined and this often allowed a clearer identification of the UN Committee's views on the requirements of the UNCPRD. This analysis thus refined and supplemented the analysis carried out in the 2012 Report, but was not used to systematically critique the findings of that earlier research. It was carried out with respect to articles 5 to 31 of the UNCPRD.
2. A literature search of relevant databases was conducted to identify all literature in English on the UNCPRD which has been published since the 2012 Report. This literature was considered to further refine the identification of the obligations and rights contained in the UNCPRD. The databases searched were: HeinOnline, Lexis, Westlaw, Social Science Citation Index (Web of Knowledge), Scopus, Sociological Abstracts, and the Social Science Research Network.
3. A critical analysis of the evidence and arguments presented in the UK State Party Report with respect to Northern Ireland was conducted. In the main, this critical analysis proceeded on the basis of the obligations with respect to policies and programmes identified in the 2012 Report. It was also based on the analysis of the Concluding Observations and academic commentaries identified through the literature search.

4. A critical analysis of the evidence and arguments presented in the Northern Ireland Executive contribution to the UK State Party Report was conducted. This included an analysis of the 'match' between the NI Executive Contribution and the final UK State Party Report as submitted to the UN Committee. It focused on what the Contribution and State Party Report contained with respect to articles 5 to 31, but also considered other materials as possible interpretative context with respect to public policies and programmes.

Work package 1 provided an updated view of the requirements with respect to public policies and programmes as contained in the UNCRPD. This updated perspective formed the basis for the analyses carried out in the subsequent work packages of the Project.

5.2 Work package 2: Northern Ireland context

Work package 2 of the Project looked at the broader context in Northern Ireland relative to the overall assessment of compliance with the UNCRPD. This assessment consisted of:

1. A critical examination of the Northern Ireland Disability Strategy in the light of the standards of the UNCRPD as identified in the 2012 research and through the work of Work package 1 of the project;
2. An analysis of Section 75 Annual Progress Reports, Section 75 Plans and the Disability Action Plans of the Northern Ireland Government Departments;
3. A consideration of relevant statistical data relating to Northern Ireland which has become available since 2010;
4. A consideration of the 'unpublished materials, legal opinions, workshops and stakeholder engagements provided by the Commission'.

The information and analyses carried out in Work package 2 informed the detailed consideration of the specific articles of the UNCRPD in Work package 4.

5.3 Work package 3: Stakeholder engagement

Work package 3 of the Project consisted of direct engagement with people with disabilities, their representative organisations and key stakeholders. This assisted in

developing a wider understanding of the specific human rights issues faced by disabled people in Northern Ireland at present and how this might have changed since the 2012 Report. This engagement with disabled people also helped to guide Work package 4 of the Project and inform the analysis and recommendations that emanate from the project.

This work package consisted of consultation with 4 stakeholder groups as follows:

1. Adults with disabilities;
2. People with learning disabilities;
3. Children and young people with disabilities; and
4. Disability organisations.

5.4 Work package 4: Update on policies and programmes

Work package 4 of the Project consisted of an analysis of the policy and programme developments since the 2012 Report. It was structured article by article of the UNCRPD and examined articles 5 to 31 only. This analysis distilled current (taken as meaning 'as of 31 December 2013') substantive shortfalls between public policies and programme delivery in Northern Ireland relative to articles 5 to 31 inclusive of the UNCRPD.

Work package 4 was conducted in the light of the results of Work packages 1 to 3 of the Project. In particular, the analysis in Work package 4 was informed by the input from stakeholders, including people with disabilities, in Work package 3. The stakeholder input informed the analysis through its provision of information relevant to the consideration of particular articles and also in identifying key areas, themes and UNCRPD articles for more in depth examination.

In addition, the project team had at the outset identified key areas for consideration in this update project. These were:

1. Consideration of the three key areas identified in the 2012 Report:
 - Awareness-raising (Article 8);
 - Participation in political and public life (Article 29); and
 - Access to information (article 9 and 21) and Statistics and data collection (Article 31).

2. Consideration of current policies towards disability discrimination in the light of Article 5 on *Equality and non-discrimination*.
3. Consideration of the developed policy positions for the Northern Ireland Mental Capacity Bill in the light of Article 12 on *Equal recognition before the law*.
4. Consideration of the Northern Ireland SEN and Inclusion policy in the light of Article 24 on *Education*.
5. Consideration of the Transforming Your Care policy agenda in the light of Article 25 on *Health*.
6. Consideration of Welfare Reform in the light of Article 28 on *Adequate standard of living and social protection*.

The analysis of Northern Ireland policies and programmes for shortfalls took the same general approach as that taken in the 2012 research project which this project updates, drawing upon a mixed methods approach which combined an analysis of policies and programmes as well as information gathered from stakeholders.

5.5 Work package 5: Interim Report

Work package 5 of the Project consisted of the production of the Interim Report of the findings. This covered a summary of activities undertaken and outstanding; and an annotated draft final report structure (including chapter headings) capable of delivering the aim and objectives of the project and supplemented with project background, findings to date and emerging recommendations; meeting the required standards for acceptance by the Equality Commission. This work package was to ensure that the project was progressing appropriately.

5.6 Work package 6: Final Report

Work package 6 of the Project involved the refinement and revision of the analyses and recommendations of the Interim Report into a Draft Final Report in the light of two additional significant inputs:

1. An Expert Seminar to receive input on the detailed content of the Interim Report and in particular on the provisional recommendations as to key issues needing to be addressed (including participation from the earlier stakeholder engagement

work). A short 5 page summary was produced in Plain English as a hand out so that participants in the Expert Seminar were informed as to the provisional findings from the project; this was based upon findings from the Interim Report.

2. Feedback received from ECNI on the content of the Interim Report.

The present research supplements, rather than replaces, the research initiated in 2010. The work commissioned in 2010, and published in 2012, is used as a starting point for further consideration, but it was not subjected to systematic critique by this project. This project was not intended or commissioned as a legal opinion nor an assessment of legal measures required by the UNCRPD; however, it necessarily contains some discussion of legal issues. It focuses on an assessment of NI policies and programmes.

The present research does not focus on the effectiveness of any processes put in place by government to implement the UNCRPD, but rather where policy or programme outputs do not meet with the requirements of the UNCRPD.

6. Stakeholder engagement

6.1 Overview

Six engagement events were held with people with disabilities, their representative organisations and key stakeholders. The aims of the events were twofold. First, to help the research team develop a wider understanding of the specific human rights issues faced by disabled people in Northern Ireland at present and how these may have changed since the 2012 Report. Second, to help the research team identify key gaps and/or developments in policies and programmes since the research for the 2012 Report and subsequently to inform the analysis and recommendations that emanate from the project. The events comprised five focus groups aimed at the four target audiences (adults with disabilities, children and young people with disabilities, people with learning disabilities, and representatives from disability organisations) held at the end of January. The sixth event was an Expert Seminar held in late February which aimed to assess the extent to which the provisional areas identified by the research team, as constituting the main shortfalls in policies and programmes against the UNCRPD, were methodologically and substantively valid and appropriate.

This chapter outlines the stakeholder engagement events that were held, including the Expert Seminar, and provides an overview of the themes that emerged. These themes are integrated further in the relevant articles in the remainder of the report.

6.2 Accessing stakeholders

To ensure that stakeholder events would be representative of those with an interest in disability policies and programmes as far as possible, the research team organised events aimed at four target groupings:

- Adults with disabilities;
- Children and young people with disabilities;
- People with learning disabilities; and
- Representatives from disability organisations.

Participants were contacted both directly through existing contacts with individuals and organisations, and indirectly via social media, organisational websites and snowballing. Stakeholder engagement events were held between the 21st and 28th January 2014 and consisted of five two-hour focus groups (two groups were held with people with a learning disability in order to get a more representative sample).

A total of thirty-six people were consulted during the focus groups to develop a wider understanding of the specific human rights issues presently faced by disabled people in Northern Ireland and the researchers were particularly interested in learning whether people with disabilities felt that these issues had changed since the 2010 Report. All attempts were made to facilitate participation by providing information in a variety of formats, interpreters where appropriate, and reimbursing travel expenses for self-advocates.

The breakdown of the focus groups is shown in the table below:

Group	Date and location	Target group	Number of participants
1	21 January 2014, 2-4pm, Queen's University Belfast	Adults with disabilities	10
2	22 January 2014, 2-4pm Olympia Leisure Centre, Belfast	Adults with learning disabilities	3 participants plus 1 supporter
3	24 January 2014, 11am-1pm Bayview Resource Centre, Bangor	Adults with learning disabilities	7 participants plus 1 supporter
4	24 January 2014, 2-4pm, Queen's University Belfast	Representatives from disability organisations	14
5	28 January 2014, 6-8pm, Armagh	Children and young people with disabilities	2 participants plus 1 supporter

Participants in focus groups 1 and 4 were recruited through a snowballing sample using email, Facebook networks, and advertising on Disability Action's website. The other three focus groups consisted of members of the research team attending regular meetings of the TILII (Telling It Like It Is) Group and Barnardo's Disabled Children and Young People's Participation Project (DCYPP). These groups were selected for their previous knowledge of human rights and their completion of advocacy training which builds awareness of the rights issues faced by other disabled people in addition to their own personal experiences. Participants were monitored to ensure that the sample was representative of people with different types of disabilities, genders, ages, geographical location/home environment, and different sizes of organisations.

Only two young people were able to attend focus group 5 in addition to a support worker and member of the Project team. This was largely due to the time of the year with school exams taking place, no existing group meeting being scheduled during the designated timeframe of the Project and other commitments. The two young people who attended spoke about their own experiences as well as those of other members of the group more generally. This was also supplemented by discussions with the project worker on wider issues facing disabled children and young people that they have come into contact with.³²

6.3 Expert Seminar

An Expert Seminar to receive input on the provisional recommendations as to key shortfalls in policies and programmes in NI was held on 21 February 2014 in the Holiday Inn, Belfast. A short 5 page summary was produced so that participants in the Expert Seminar were informed as to the provisional findings from the project. This event was targeted at a cross-section of those who had attended previous stakeholder engagement events as well as others who had not attended but who had

³² In addition, we were able to obtain minutes from a meeting between the young people and a policy official from the Children and Young People's Unit in OFMDFM for the purposes of reporting to the Committee on the Rights of the Child. We have also endeavoured to take on board other existing material such as consultation responses by NICCY and the Children with Disabilities Strategic Alliance on relevant issues to make up for this shortfall.

a particular interest or expertise in the area. A total of 39 participants attended including disabled people, representatives from disability organisations, representatives from other community and voluntary sector organisations, policy officers and officials, and academic experts.

6.4 Key questions asked

Each event was facilitated around the following questions:

- What have been the key policy developments since 2010 and what is their significance with respect to the UNCRPD?
- What are the **current** substantive shortfalls between policy and programme delivery in NI relative to the UNCRPD?
- Are the 3 areas identified in the First Report still relevant today?³³

It is important to note that the remit of the current project was to consider key changes since the 2012 Report. Across all events, a number of issues were raised that have been included and reflected upon in the first report and which remain valid. As such, the present report focuses primarily on areas where there have been key policy and programme changes or development, taking into account the feedback from stakeholders.

6.5 Key themes from stakeholder events

All three priorities from the 2012 Report were still viewed as important as overarching and cross-cutting themes across all focus groups and the Expert Seminar.³⁴ Participants discussed these in the context of other rights such as health and social care, education, employment, transport, independent living and accessibility more generally. Rights relating to awareness-raising, participation, and access to information, statistics and data collection were therefore perceived as very much impinging on the ability to exercise and enjoy a range of other rights in the

³³ Awareness-raising (Article 8); Participation in political and public life (Article 29); and Access to information, statistics and data collection (Articles 9, 21 and 31)

³⁴ This is elaborated upon in each article as appropriate.

UNCRPD. This is testament to the ways in which UNCRPD rights, and human rights more generally, are highly interdependent.

Adults with disabilities

In addition to these three priority cross-cutting areas, adults with disabilities spoke of how a range of policies may be in place but actually accessing programmes or services could be made difficult by varying levels of physical access, the lack of involvement of disabled people in decisions and processes, and the growing levels of bureaucracy in accessing services. Key messages that emerged from this group included the need for a more inclusive society, involving disabled people in decision making processes (and the importance of feedback as to how disabled people's views have been used), including with respect to the implementation and monitoring of the UNCRPD, and facilitating individual choices.

People with a learning disability

For people with learning disabilities, key additional themes emerged in addition to awareness-raising, participation and access to information around the need for support in relation to independent living, a desire to be treated with greater respect and dignity, more work opportunities, and greater involvement in decision-making processes. It is of particular importance to note that participants across both of these groups wanted to continue to talk about the issues that had been raised as they enjoyed being asked to think about these issues and felt that their voices were being taken seriously as experts in their own lives; an important theme that should be considered in the development and implementation of policies and programmes in Northern Ireland.

Children and young people with disabilities

The young people we spoke to also discussed the importance of education, opportunities for work, support for independent living and transport. One young

person was going through the transitions process³⁵ whilst the other was approaching this stage. Both had concerns and fears over the opportunities and supports available to them. Underpinning these issues were a desire for more information and greater awareness among service providers (employment, education and leisure providers) as well as society more generally.

Representatives from disability organisations

Participants from disability organisations also reaffirmed the three cross-cutting issues. Concern was expressed around the Disability Strategy and the need for an action plan supported by effective implementation and monitoring. Welfare Reform emerged as a key area of concern in addition to the Mental Capacity Bill, Transforming Your Care, the proposed Special Educational Needs and Inclusion framework and the need for more engagement with disabled people in the development and implementation of policies and programmes. It was suggested that Welfare Reform was ‘making things worse’ across the three priority areas. The need for greater support for independent living was also highlighted since the lack thereof was perceived as a threat to full participation in society by disabled people.

Expert Seminar

The three cross-cutting areas of awareness raising, participation in political and public life and access to information, statistics and data collection were also reaffirmed in the Expert Seminar alongside the five substantive areas that were identified by the research team as constituting key current shortfalls in Northern Ireland when assessed against the UNCRPD.

When asked whether there were other significant policy and programme areas where shortfalls exist, a number of issues were highlighted including:

- Article 19 – *Living independently and being included in the community* including the availability of resources and support to facilitate independent

³⁵ In this case, the person was referring to the ‘transition process’ as meaning a transfer from school into employment and/or training, though this phrase can sometimes refer to other stages of transition in a person’s life.

living, along with awareness and information about the supports and opportunities available;

- Recognising the particular experiences of those with multiple identities, including children and young people with disabilities; women with disabilities; individuals with disabilities from minority ethnic groups; and individuals from lesbian, gay, bisexual, and transgender (LGBT) communities;
- Concerns with respect to the implementation, monitoring and resourcing of the Disability Strategy;
- Concerns with respect to the gap between policy intentions and outcomes;
- That consideration be given to a Commissioner for People with Disabilities; and
- Involvement of people with disabilities in policy and programme development and implementation (as well as decision-making processes more generally).

7. Key requirements of Articles 5 to 31 UNCRPD and key policy and programmes for delivery on UNCRPD in Northern Ireland

7.1 Article 5: Equality and non-discrimination

Jurisprudence of the UN Committee on the Rights of Persons with Disabilities

There are clear messages emerging in this jurisprudence of the UN Committee on the Rights of People with Disabilities with respect to the policies and programmes necessary to give full effect to Article 5. These include:

- Anti-discrimination legislation must not be narrower than that provided for under the UNCRPD and must provide the same level of legal protection to all persons with disabilities;³⁶
- Anti-discrimination legislation must address intersectional discrimination,³⁷ including collection of data on people in minority groups with disabilities;³⁸
- Anti-discrimination legislation should cover perceived disability and association with a person with a disability;³⁹
- Anti-discrimination legislation should include a principle of indirect discrimination;⁴⁰
- ‘Reasonable accommodation’ must be explicitly covered as discrimination;⁴¹
- State parties must take steps to simplify existing judicial and administrative remedies in order to enable persons with disabilities to report acts of discrimination to which they have been subjected;⁴²

³⁶ CRPD/C/AUS/CO/1 Concluding Observations: Australia, at para 15.

³⁷ CRPD/C/AUS/CO/1 Concluding Observations: Australia, at para 15; CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 13; and CRPD/C/PER/CO/1 Concluding Observations: Peru, at para 13.

³⁸ CRPD/C/PER/CO/1 Concluding Observations: Peru, at para 13.

³⁹ CRPD/C/ESP/CO/1 Concluding Observations: Spain, at para 20.

⁴⁰ CRPD/C/CHN/CO/1 Concluding Observations: China, at para 12.

⁴¹ CRPD/C/HUN/CO/1 Concluding Observations: Hungary, at para 16; CRPD/C/ARG/CO/1 Concluding Observations: Argentina, at para 12; CRPD/C/CHN/CO/1 Concluding Observations: China, at para 12; CRPD/C/TUN/CO/1 Concluding Observations: Tunisia, at para 13; and CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 14.

⁴² CRPD/C/ARG/CO/1 Concluding Observations: Argentina, at para 12.

- State parties should establish fast-track legal and administrative remedies to obtain reparation in cases of discrimination;⁴³ and
- Remedies for breaches of anti-discrimination law are largely restricted to financial compensation. Remedies to change behaviour should be introduced.⁴⁴

The UK State Party Report and the NI Executive Contribution to it

Under the heading, 'Anti-discrimination legislation', the UK State Party Report states:

'In **Great Britain**, the Equality Act 2010 is the most significant piece of equality legislation for many years. It has brought a new clarity and coherence to anti-discrimination legislation. It is easier to understand and operate, whilst continuing to ensure to protect disabled people from discrimination. It is a key element in delivery of the Convention.'

[emphasis added].

The main provisions of the Equality Act 2010 are set out in the UK State Party Initial Report⁴⁵ and also in the UK Common Core Document.⁴⁶ These include provisions on direct and indirect discrimination, discrimination arising from a disability, reasonable adjustments/accommodation and harassment. It also refers to the public sector equality duties which include disability.

The UK State Party Report states, 'In **Northern Ireland** similar protection is provided for disabled people by the Disability Discrimination Act (DDA) 1995, as amended.'⁴⁷ It goes on to refer to the disability duties and Section 75 of the Northern Ireland Act 1998.

In the Northern Ireland Executive's Contribution to the UK Government Report to the UN Committee, reference is made to Section 75 of the Northern Ireland Act 1998,

⁴³ CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 16.

⁴⁴ CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 13.

⁴⁵ The Initial Report describes how the UNCRPD is being implemented in the UK. It is available at odi.dwp.gov.uk/docs/disabled-people-and-legislation/uk-initial-report.pdf.

⁴⁶ The UK Common Core Document describes the structure of the UK government including devolution and human rights legislation.

⁴⁷ The Disability Discrimination Act was amended as the Disability Discrimination (NI) Order 2006.

the DDA 1995 as amended, and the Special Educational Needs and Disability Order 2005.

Northern Ireland Disability Strategy 2012-2015

The Office of the First Minister and Deputy First Minister's Disability Strategy is silent on legislative reform. This is criticised in the IMNI response to the Draft Strategy, which repeats some of the ECNI proposals.⁴⁸ The only mention of Article 5 in the Disability Strategy is linked to tackling crimes against older and vulnerable people through the Sentencing Guidelines initiative, Be Safe, Stay Safe project, and the Community Safety Strategy (all led by the Department of Justice).⁴⁹

Reconsideration of key Northern Ireland policies and programmes

While legal comment is outside the remit of this study, the general nature of this article does require analysis of legal developments on Article 5. The reference to 'all discrimination' in Article 5(2) has been widely interpreted by the UN Committee to include perceived and associative discrimination and indirect discrimination. So also, intersectional discrimination is within the scope of Article 5. Finally, outside of Article 13 (*Access to justice*), the UN Committee considers access to remedies for discrimination to be within the scope of Article 5.

In 'Strengthening Protection for Disabled People Proposals for Reform' (March 2012),⁵⁰ the ECNI has set out its proposals for legislative reform, partly relying on its interpretation of the UNCPRD, supported by Counsel's Opinion on Malcolm.⁵¹ The IMNI has produced 'A Position Paper on the Initial United Kingdom State Party

⁴⁸ Available at www.equalityni.org/ECNI/media/ECNI/Consultation%20Responses/2012/ofmdfm_disability_strategy-IMNI_response.pdf.

⁴⁹ Office of the First Minister and Deputy First Minister (2013) 'The Disability Strategy 2012-2015', Belfast: OFMDFM, pp. 43-44.

⁵⁰ ECNI (2012) 'Strengthening Protection for Disabled People Proposals for Reform', <http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/Disabilitylawreformproposalsfullreport2012.pdf?ext=.pdf>.

⁵¹ Mayor and Burgesses of the London Borough of Lewisham v Malcolm [2008]UKHL 43 (<http://www.bailii.org/uk/cases/UKHL/2008/43.html>)

Report' (January 2013), relying to some extent on the ECNI proposals. These include the following:

- Simplifying and bringing consistency to the legislation;
- Improving protection against different types of discrimination, taking account of developments in case law;
- Updating the definition of disability to reflect the social model and removing the list of capacities;
- Providing protection against indirect disability discrimination and 'discrimination arising out of disability';
- Providing protection for carers of disabled people and those perceived as being disabled; and
- Providing protection against harassment in accessing goods, facilities and services.⁵²

In terms of 'developments in case law', both the ECNI's proposals and Counsel's Opinion identify the conclusions of the Joint UN Committee on Human Rights that the Malcolm decision made it 'less likely' that the law in GB (and NI) would satisfy Article 5.⁵³

The Departmental Equality Schemes all highlight how the department will assess, monitor, and publish the results of the impact of policies on Section 75 Groups.⁵⁴

⁵² ECNI (2012) 'Strengthening Protection for Disabled People Proposals for Reform', para 13, available at <http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/Disabilitylawreformproposalsfullreport2012.pdf?ext=.pdf>.

⁵³ Joint Committee on Human Rights: The UN Convention on the Rights of Persons with Disabilities, first report of session 2008/09, Jan 2009, p.35, available at <http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/9/9.pdf>.

⁵⁴ Department for Employment and Learning Equality Scheme 2011, pp.14-20; Department of Culture, Arts & Leisure Equality Scheme 2011, pp. 21-29; Department of Agriculture and Rural Development Equality Scheme 2011, pp.21-31; Department of Education Equality Scheme 2013, pp.9-18; Department of Enterprise, Trade & Investment Equality Scheme 2012, pp.15-22; Department of Health, Social Services & Public Safety Equality Scheme, pp.25-32; Department of the Environment Equality Scheme 2012, pp.20-27; Department of Justice Equality Scheme 2012, pp.18-25; Department for Regional Development Equality Scheme 2011, pp.19-28; Department of Finance & Personnel Equality Scheme 2011, pp.16-22; and The Office of the First Minister and Deputy First Minister Equality Scheme 2011, pp.36-39.

Any significant gaps and shortfalls in Northern Ireland policies and programmes

There are clearly a range of measures which could be implemented to protect disabled people from discrimination and which the NI Executive has not yet implemented. These are considered in turn below in light of the UN Committee jurisprudence:

1. **Definition of ‘disability’:** The UNCRPD provides a wider definition of disability,⁵⁵ based on a social model, than that in the DDA (or the Equality Act 2010). The Court of Justice of the European Union (CJEU) has concluded that, as the EU has ratified the UNCRPD, all EU law, including the Framework Directive 2000/78⁵⁶ must be applied in conformity with the UNCRPD.⁵⁷ This contradicts the conclusion of Butlin⁵⁸ that the Equality Act 2010 definition of disability conforms to the Framework Directive (but not the UNCRPD). The ECNI has recommended that the definition of disability under domestic legislation in Northern Ireland is amended in order to reflect the ‘social model’ of disability, in line with the approach adopted within the UNCRPD. In Great Britain, the definition of disability has been changed through the removal of the list of capacities in order to make it easier for disabled people to fall within the definition of disability. Domestic legislation in Northern Ireland has not been similarly amended.
2. **Perceived and associative discrimination:** The CJEU decided in the Coleman case⁵⁹ that the formulation in the Framework Directive 2000/78, ‘on grounds of disability’, includes associative discrimination. It is widely accepted that this formulation includes perceived discrimination, which is an important protection for carers. The UN Committee has confirmed that perceived and associative discrimination are covered by Article 5. Domestic legislation in

⁵⁵ United Nations Convention on the Rights of Persons with Disabilities 2006, Article 2.

⁵⁶ Employment Equality Framework Directive: Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, *Official Journal of the European Union*, L 303, 02/12/2000 P. 0016 – 0022.

⁵⁷ HK Danmark, v Dansk almennyttigt Boligselskab [2013] EUECJ C-335/11 (11 April 2013), available at <http://www.bailii.org/eu/cases/EUECJ/2013/C33511.html>.

⁵⁸ Butlin, SF (2011) ‘The UN Convention on the Rights of Persons with Disabilities: does the Equality Act 2010 measure up to UK international commitments?’, *Industrial Law Journal* 428.

⁵⁹ Coleman (Social policy) [2008] EUECJ C-303/06 (17 July 2008), available at <http://www.bailii.org/eu/cases/EUECJ/2008/C30306.html>.

Great Britain has been amended to make it clear that perceived and associative discrimination is unlawful whereas domestic legislation in Northern Ireland has not been similarly amended.

3. **Indirect discrimination:** The Framework Directive 2000/78 allows a justification defence in an indirect discrimination case where there is reasonable accommodation in relation to persons with a particular disability.⁶⁰ In Great Britain under the Equality Act 2010, an indirect discrimination principle in relation to disability has been included. The UN Committee has confirmed that ‘all discrimination’ in Article 5 includes indirect discrimination, along with a reasonable accommodation principle. Domestic legislation in Northern Ireland has not been similarly amended to include indirect disability legislation. In Great Britain, the Equality Act 2010 introduced protection against indirect discrimination and ‘discrimination arising out of disability’ in order to address the impact of the House of Lords decision in Malcolm; which restricted the ability of disabled people to claim disability-related discrimination. As noted above, the Joint Committee on Human Rights in Great Britain⁶¹ was of the view that the Malcolm decision made it ‘less likely’ that the law in GB (and NI) would satisfy Article 5. In addition, a legal opinion obtained by the ECNI highlights that the present situation in Northern Ireland, i.e. the application of Malcolm to disability discrimination law, renders Northern Ireland potentially in breach of the obligations under the Employment Framework Directive 2000/78; and the UNCPRD. Whilst changes were introduced in Great Britain to address the impact of Malcolm, no similar changes were introduced in Northern Ireland.⁶²
4. **Discrimination arising out of disability:** The all-embracing approach of the UN Committee indicates that a principle on ‘discrimination arising out of disability’ may also be required by Article 5, as has been introduced in Great

⁶⁰ The Draft Goods and Services Directive (COM (2008) 426 final), sought to be compliant with the UNCPRD, does not.

⁶¹ The Joint Committee on Human Rights in Great Britain has jurisdiction over the whole of the UK.

⁶² Equality Commission NI (2012) ‘The Malcolm Case – full briefing’, available at <http://www.equalityni.org/Delivering-Equality/Addressing-inequality/Law-reform/Research-investigations/Legal-briefing-on-Malcolm-case-full-text> (last visited 21 April 2014).

Britain under the Equality Act 2010.⁶³ As noted above, domestic legislation in Northern Ireland has not been similarly amended to include protection against 'discrimination arising out of disability'.

5. **Intersectional discrimination:** The UN Committee's approach raises issues on discrimination cases on more than one ground, introduced in the Equality Act 2010 in Great Britain, but not implemented. Domestic legislation in Northern Ireland does not include protection against intersectional discrimination.
6. **Access to remedies:** This approach of the UN Committee raises issues such as legal aid in tribunal cases, the introduction of tribunal fees (in Great Britain but not in Northern Ireland) and remedies beyond compensation. The ECNI opposed the introduction of tribunal fees into Northern Ireland⁶⁴ and the lack of follow-up by Department for Employment and Learning (NI) on this proposal keeps Northern Ireland in compliance with Article 5 on this point.
7. ECNI has recommended that the equality legislation, across all grounds, is strengthened by providing increased **powers for tribunals** to make recommendations that **benefit the whole workforce** and not simply the person bringing the discrimination complaint. This could, for example, include giving the tribunal the power to order a respondent to provide disability equality training to their staff. This extended power already exists under the fair employment legislation in Northern Ireland. Whilst this power was originally introduced in Great Britain under the Equality Act 2010, the UK Government has indicated that it proposes to repeal this provision through the draft Deregulation Bill currently progressing through Parliament.⁶⁵

⁶³ As the ECNI's Counsel's Opinion indicates, an initial attempt to respond to Malcolm by introducing only indirect discrimination into the Equality Bill was thwarted and both indirect discrimination and discrimination arising from disability were included in the Act.

⁶⁴ Equality Commission NI (2012) 'Department for Employment and Learning's Employment Law Discussion Paper: Briefing', available at http://www.equalityni.org/archive/foi/cmeeting220812/DEL%20Discussion%20paper%20EC_12_7_2.pdf.

⁶⁵ Cabinet Office (2013) 'Draft Deregulation Bill', available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/210035/130701_CM_8642_Draft_Deregulation_Bill.pdf.

7.2 Article 6: Women with disabilities

Jurisprudence of the UN Committee on the Rights of Persons with Disabilities

A number of key themes have emerged from the UN Committee's Concluding Observations to date:

- There is a need for a strategy guaranteeing full protection of the rights of women and girls with disabilities (including recognition of multiple forms of discrimination) and inclusion in decision-making;⁶⁶
- Disability should be mainstreamed in all gender-equality policies and programmes⁶⁷ including those regarding gender-based violence;⁶⁸ and
- More information on the situation of women and girls with disabilities is needed.⁶⁹

It is clear from its jurisprudence to date that the UN Committee on the Rights of Persons with Disabilities sees particular challenges in fulfilling the rights of women with disabilities.

The UK State Party Report and the NI Executive Contribution to it

The Northern Ireland Executive's Contribution to the UK State Party Report identified the Safeguarding Vulnerable Adults policy and the Sexual Assault Referral Centre initiative as being of particular relevance to Article 6.⁷⁰ The UK State Party Report

⁶⁶ CRPD/C/ARG/CO/1 Concluding Observations: Argentina, at para14; CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 17; CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 18; CRPD/C/HUN/CO/1 Concluding Observations: Hungary, at para 20; CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 18; CRPD/C/PER/CO/1 Concluding Observations: Peru, at para 15; CRPD/C/ESP/CO/1 Concluding Observations: Spain, at para 22; and CRPD/C/TUN/CO/1 Concluding Observations: Tunisia, at para 15.

⁶⁷ CRPD/C/ARG/CO/1 Concluding Observations: Argentina, at para14; CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 18; and CRPD/C/PER/CO/1 Concluding Observations: Peru, at para 15.

⁶⁸ CRPD/C/AUS/CO/1 Concluding Observations: Australia, at para 17; CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 18; CRPD/C/PER/CO/1 Concluding Observations: Peru, at para 15; and CRPD/C/ESP/CO/1 Concluding Observations: Spain, at para 22.

⁶⁹ CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 18 and CRPD/C/TUN/CO/1 Concluding Observations: Tunisia, at para 15.

⁷⁰ 'Northern Ireland Executive's Contribution to the UK Government Report to the United Nations Committee', at 8. Available at

stated that women with disabilities are more likely to experience multiple forms of discrimination and that the Equality Act 2010 protects against discrimination in GB.⁷¹

Northern Ireland Disability Strategy 2012-2015

The Disability Strategy includes Article 6 in the theme 'Children, Young People, & Family' but it does not assign it any action points.⁷² In the absence of such action points, it is difficult to see how the rights of women with disabilities can be effectively protected through implementation of the Strategy.

Reconsideration of key Northern Ireland policies and programmes

The 2012 research expressed concerns with equal access to maternity and sexual health services and recommended it should be examined with articles 8, 9, 21, and 31.⁷³ Article 6 is not mentioned in any of the disability specific strategies.

The Strategy for Maternity Care in Northern Ireland 2012 – 2018 states that it is interrelated to the Bamford Action Plan 2009-2011 & 2012-2015, particularly in relation to perinatal mental health, and that a sub-group has been established to take forward this issue.⁷⁴

It is useful to note that the Northern Ireland Women's European Platform (NIWEP) expressed concern in 2012 that Welfare Reform could disproportionately impact not just on disabled people generally, but on disabled women as a result of the intersection between gender and disability.⁷⁵ Further, in its Concluding Observations

http://www.ofmdfmi.gov.uk/executives_contribution_to_the_uk_government_report_to_the_united_nations_committee_-_amended.pdf (Last visited 17 January 2014).

⁷¹ CRPD/C/GBR/1, 'Consideration of Reports Submitted by States Parties Under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland', 24 November 2011, at para 69.

⁷² Office of the First Minister and Deputy First Minister (2013) 'The Disability Strategy 2012-2015', Belfast: OFMDFM.

⁷³ Harper, C, S McClenahan, B Byrne & H Russell (2012) 'Disability Programmes and Policies: How Does Northern Ireland Measure Up?', Belfast: Equality Commission for Northern Ireland, p.5.

⁷⁴ Department for Health, Social Services & Public Services (2012) 'A Strategy for Maternity Care in Northern Ireland 2012 – 2018', Belfast: DHSSPS, p.18.

⁷⁵ Northern Ireland Women's European Platform (2012) 'Submission on the list of issues for the CEDAW Committee pre-sessional working group meeting', Geneva. See also: Browne, J (2010) 'The

to the UK, the UN Committee on the Elimination of Discrimination Against Women (CEDAW) urged the State party to mitigate the impact of austerity measures on women and the services provided to women, especially women with disabilities.⁷⁶ The CEDAW Committee also expressed concern that women with disabilities face obstacles in gaining access to medical health care, including prenatal care and reproductive health services,⁷⁷ and at the high unemployment rates for women with disabilities.⁷⁸

Stakeholder engagement

Article 6 was not mentioned during stakeholder engagement events, however; some participants in the Expert Seminar highlighted a need for the rights of women with disabilities to be explicitly recognised and made visible, particularly with respect to the Disability Strategy.

Any significant gaps or shortfalls in Northern Ireland public policy and programmes

There appears to be significant gaps in knowledge with respect to the rights of women with disabilities in Northern Ireland. It needs to be made explicit in any gender-based policy how equal access for disabled women and girls will be made available. More information and data is also needed on the circumstances of women and girls with disabilities in Northern Ireland (also see Article 31).

7.3 Article 7: Children with disabilities

Jurisprudence of the UN Committee on the Rights of Persons with Disabilities

In its Concluding Observations, the UN Committee has recommended that States parties should take the following actions:

Impact of Tax and Benefit Reform to be introduced in Northern Ireland between 2010 and 2011 and 2014-15 in Northern Ireland', London: Institute for Fiscal Studies.

⁷⁶ Committee on the Elimination of Discrimination against Women (2013) CEDAW/C/GBR/CO/7, 'Concluding Observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland', at para 21.

⁷⁷ *Ibid*, at para 52.

⁷⁸ *Ibid*, at para 46.

- Ensure that the rights of children with disabilities are incorporated into policies and programmes, service standards, operational procedures and compliance frameworks that apply to children and young people generally;⁷⁹
- Establish specific programmes to guarantee the rights of children with disabilities, with a particular focus on those who live in rural areas and including children with hearing, visual and intellectual impairments;⁸⁰
- Establish policies and programmes that ensure the right of children with disabilities to express their views on all matters affecting them;⁸¹
- Ensure that policies and programmes take account of the full range of rights across children's lives, including family life and community life;⁸²
- Challenge stigma experienced by children with disabilities;⁸³
- Take steps to ensure protection from abuse, violence and ill-treatment;⁸⁴
- Take steps to replace institutional care for children with disabilities with community based care and establish inclusive community based rehabilitation programmes;⁸⁵
- Undertake research on violence against children with disabilities;⁸⁶
- Develop coordinated public policies with sufficient resources to ensure inclusive access to support services, including during early childhood;⁸⁷
- Allocate necessary professional and financial resources to enable children to continue to live with families in their own communities; and
- Gather accurate data to monitor the realisation of rights.⁸⁸

⁷⁹ CRPD/C/AUS/CO/1 Concluding Observations: Australia, at para 19 and CRPD/C/ARG/CO/1 Concluding Observations: Argentina, at para 16.

⁸⁰ CRPD/C/SLV/CO/1, Concluding Observations: El Salvador at para 20.

⁸¹ CRPD/C/AUS/CO/1 Concluding Observations: Australia, at para 19 and CRPD/C/ESP/CO/1 Concluding Observations: Spain, at para 24.

⁸² CRPD/C/PRY/CO/1, Concluding Observations: Paraguay, at para 20.

⁸³ CRPD/C/CHN/CO/1, Concluding Observations: China, at para 14.

⁸⁴ CRPD/C/PER/CO/1 Concluding Observations: Peru, at para 17 and CRPD/C/PRY/CO/1, Concluding Observations: Paraguay, at para 20

⁸⁵ CRPD/C/PRY/CO/1, Concluding Observations: Paraguay, at para 20 and CRPD/C/CHN/CO/1, Concluding Observations: China, at para 14.

⁸⁶ CRPD/C/ESP/CO/1 Concluding Observations: Spain, at para 24 and CRPD/C/TUN/CO/1 Concluding Observations: Tunisia, at para 17.

⁸⁷ CRPD/C/ESP/CO/1 Concluding Observations: Spain, at para 24 and CRPD/C/TUN/CO/1 Concluding Observations: Tunisia at para 17.

The UK State Party Report and the NI Executive Contribution to it

The UK State Party Report makes reference to the Northern Ireland Children and Young People's Ten Year (2006-2016) Strategy and associated Action Plan which 'aims to improve the lives of all children, including disabled children.'⁸⁹ The Children and Young People's Strategy commits the Northern Ireland Executive to working across all government departments to ensure a coordinated partnership approach to policy development and the coherent delivery of services for children and young people to improve outcomes. The State party report further notes that a progress report on the achievements of the last five years is currently being prepared.⁹⁰ At the time of writing this was not publicly available.

Northern Ireland Disability Strategy 2012-2015

The Disability Strategy notes that further plans are being developed through the Delivering Social Change Framework to ensure the rights of children with disabilities.⁹¹ 'Children, Young People and the Family' is a specific theme in the Disability Strategy. Strategic priorities 9 and 10 address the rights of children with disabilities and state obligations towards them indirectly through providing families and carers with support to enable the child with a disability to fulfil their full potential and 'that other children within the family have the same opportunities as children in families without a child or family member with a disability.' Strategic priority 11 focuses on the transition to adulthood for young people with disabilities. No specific actions or targets are established in relation to disabled children or the strategic

⁸⁸ CRPD/C/PER/CO/1 Concluding Observations: Peru, at para 17 and CRPD/C/TUN/CO/1 Concluding Observations: Tunisia at para 17.

⁸⁹ Office of the First Minister and Deputy First Minister (2006) 'Our Children and Young People – Our Pledge: A ten year strategy for children and young people in Northern Ireland 2006-2016', Belfast: OFMDFM.

⁹⁰ United Nations Committee on the Rights of Persons with Disabilities (2011) CRPD/C/GBR/1, 'Consideration of Reports Submitted by States Parties Under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland' at para 74.

⁹¹ Office of the First Minister and Deputy First Minister (2013) 'The Disability Strategy 2012-2015', Belfast: OFMDFM, p.8.

priorities. However; the Disability Strategy identifies the following actions from the Programme for Government 2011-15 as relevant to Article 7:

- increase the overall proportion of young people who achieve at least 5 GCSEs at A*-C;⁹²
- Develop a Childcare Strategy;⁹³
- Fulfil the Child Poverty Act;⁹⁴
- Improve Safeguarding Outcomes for Children and Vulnerable Adults;⁹⁵ and
- Ensure that all children have the opportunity to participate in shared education programmes.⁹⁶

Reconsideration of key Northern Ireland policies and programmes

The key change since the 2012 Report is the launch of the consultation document Delivering Social Change for Children and Young People⁹⁷. This policy integrates the 'Child Poverty Strategy' and the 'Ten Year Strategy for Children and Young People'. The consultation document has two objectives relating to disabled children:

- Provide support through the Childcare Fund to provide small capital grants to enable registered childcare settings to adapt to cater for children with a disability reinforced by training provision;⁹⁸ and
- Provide additional support to young people with disabilities to improve their transition to adulthood and enable them to seek further education and qualifications.⁹⁹

Concern has been expressed at the lack of priority accorded to children and young people with disabilities in the Disability Strategy, including those with complex

⁹² *Ibid*, p.34.

⁹³ *Ibid*, p.37.

⁹⁴ *Ibid*, p.38.

⁹⁵ *Ibid*, p.50.

⁹⁶ *Ibid*, p.51.

⁹⁷ Office of the First Minister and Deputy First Minister (2014) 'Delivering Social Change for Children and Young People consultation document', Belfast: OFMDFM.

⁹⁸ *Ibid*, at para 2.9.

⁹⁹ *Ibid*, at para 5.5.

needs.¹⁰⁰ Indeed, research suggests that 57% of disabled children are living in poverty compared to 37% of those without disabilities.¹⁰¹ Further concern has been expressed that no connection has been made between Delivering Social Change for Children and Young People and the Disability Strategy.¹⁰²

The Children with Disabilities Strategic Alliance (CDSA) has identified a number of cross-cutting issues which must be addressed as a priority by the Government in Northern Ireland:

- Priority funding for disabled children and young people is needed.
- Research on the needs and circumstances of disabled children and young people;
- Disability-specific and mainstream services should be accessible to children and young people;
- Empowering children and young people with disabilities and their families through training, information and advice, and active participation in decision-making; and
- Full and active inclusion of children with disabilities in strategic policy initiatives.¹⁰³

Stakeholder engagement

Article 7 was raised as a significant issue across stakeholder focus groups and the Expert Seminar. Young people who attended the stakeholder events spoke of:

- A need for support in making the transition from school to further education and the workplace;
- A need for good quality and age appropriate short breaks;
- The importance of involvement in decision-making processes; and

¹⁰⁰ Children in Northern Ireland (2014) 'Briefing Paper and Response to Delivering Social Change for Children and Young People consultation document', Belfast: Children in Northern Ireland.

¹⁰¹ Children with Disabilities Strategic Alliance (2012) CDSA Manifesto, Belfast: CDSA.

¹⁰² Children in Northern Ireland (2014) 'Briefing Paper and Response to Delivering Social Change for Children and Young People consultation document', Belfast: Children in Northern Ireland.

¹⁰³ Children with Disabilities Strategic Alliance (2012) CDSA Manifesto, Belfast: CDSA.

- A desire for greater participation in social activities available to other young people.

Similar issues were raised by those who attended the Expert Seminar. Emphasis was also placed on the need for more data on the experiences of children and young people with disabilities.

Any significant gaps or shortfalls in Northern Ireland public policy and programmes

Children with disabilities do not appear to be prioritised or given sufficient attention in either those policies which apply generally to children and young people in Northern Ireland or in disability specific policies and strategies. The latter appear more focused on adults with disabilities or on the family unit rather than specifically on children with disabilities as subjects in their own right. There also continues to be a lack of research on the experiences of children and young people with disabilities and limited data to confirm how effectively the rights of this population group are being respected, protected or fulfilled.

7.4 Article 8: Awareness-raising

Jurisprudence of the UN Committee on the Rights of Persons with Disabilities

A number of key themes have emerged from the UN Committee's Concluding Observations to date:

- The need for awareness-raising campaigns to counter negative stereotypes and promote the social model of disability in accordance with the UNCRPD;¹⁰⁴
- The need to promote disability education and training on the UNCRPD;¹⁰⁵ and

¹⁰⁴ CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 21; CRPD/C/CHN/CO/1 Concluding Observations: China, at para 16; CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 21; CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 21; CRPD/C/PER/CO/1 Concluding Observations: Peru, at para 18; and CRPD/C/TUN/CO/1 Concluding Observations: Tunisia, at para 18.

¹⁰⁵ CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 22; CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 22; CRPD/C/ESP/CO/1 Concluding Observations: Spain, at para 26; CRPD/C/PER/CO/1 Concluding Observations: Peru, at para 18; and CRPD/C/TUN/CO/1 Concluding Observations: Tunisia, at para 18.

- The need to combat negative perceptions of children with disabilities in relation to adoption.¹⁰⁶

The UK State Party Report and the NI Executive Contribution to it

The Northern Ireland Executive's Contribution to the UK Government Report identified the PSI Strategy on Disability,¹⁰⁷ the Protect Life – A shared vision strategy and action plan,¹⁰⁸ the Regional Autism Action Plan¹⁰⁹ and a review of arrangements for supporting communication between schools and deaf or hard of hearing parents as ways in which it was promoting the principles of the UNCPRD. It also stated that it had designated the role of awareness-raising on the UNCPRD to the ECNI and NIHRC.¹¹⁰ In their role as the Independent Mechanism for Northern Ireland, the two Commissions take a contrary view as to their responsibilities.¹¹¹ The UK State Party Report also highlighted the potential that the 2012 Olympic and Paralympic Games presented to promote positive attitudes towards people with disabilities.¹¹²

Northern Ireland Disability Strategy 2012-2015

The Disability Strategy identifies awareness-raising as one of its themes: strategic priority 3 discusses increasing awareness of people with disabilities about their rights and opportunities, while strategic priority 4 is aimed at awareness-raising of the

¹⁰⁶ CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 21.

¹⁰⁷ Office of the First Minister and Deputy First Minister (2009) 'Report of the Promoting Social Inclusion Working Group on Disability', Belfast: OFMDFM.

¹⁰⁸ Department of Health, Social Services & Public Safety (2006) 'Protect Life – A shared vision: The Northern Ireland Suicide Prevention Strategy and Action Plan 2006-2011', Belfast: DHSSPS.

¹⁰⁹ Northern Ireland Executive (2013) 'The Autism Strategy (2013-2020) and Action Plan (2013-2016)', Belfast: NI Executive.

¹¹⁰ Northern Ireland Executive (2011) 'Northern Ireland Executive's Contribution to the UK Government Report to the United Nations Committee', at 9-11. Available at

http://www.ofmdfmi.gov.uk/executives_contribution_to_the_uk_government_report_to_the_united_nations_committee_-_amended.pdf (Last visited 17 January 2014).

¹¹¹ See the CRPD Independent Mechanism for NI document 'Independent Mechanism for Northern Ireland: Roles & Responsibilities within the Framework of Article 33' (August, 2010). A consideration of roles within article 33 both in principle and in NI practice lies beyond the scope of this Report.

¹¹² CRPD/C/GBR/1, 'Consideration of Reports Submitted by States Parties Under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland', 24 November 2011, at para 79.

general public.¹¹³ There are no targets in the Disability Strategy for either priority and it is unclear how the priorities will be met. Two Programme for Government commitments are identified within the Disability Strategy as related to Article 8:

- The improvement of community safety by tackling anti-social behaviour;¹¹⁴ and
- Reform and Modernise the Prison Service.¹¹⁵

Reconsideration of key Northern Ireland policies and programmes

Article 8 was identified as a priority within the 2012 research.¹¹⁶ The Autism Strategy states that a training programme for relevant frontline Northern Ireland Civil Service (NICS) staff and a public awareness-raising campaign on autism will be conducted by March 2015.¹¹⁷ The Physical and Sensory Disability Strategy states that all health and social care staff should have disability awareness training to be assessed annually.¹¹⁸ All Government Departments' Disability Action Plans¹¹⁹ made commitments to raising awareness of issues facing people with disability by training staff,¹²⁰ and the Equality Schemes outline these commitments how they will be

¹¹³ Office of the First Minister and Deputy First Minister (2013) 'The Disability Strategy 2012-2015', Belfast: OFMDFM.

¹¹⁴ *Ibid*, p.45.

¹¹⁵ *Ibid*, p.48.

¹¹⁶ Harper, C, S McClenahan, B Byrne & H Russell (2012) 'Disability Programmes and Policies: How Does Northern Ireland Measure Up?', Belfast: Equality Commission for Northern Ireland, p.5.

¹¹⁷ Department of Health, Social Services & Public Safety (2013) 'The Autism Strategy (2013-2020) and Action Plan (2013-2016)', Belfast: DHSSPS.

¹¹⁸ Department of Health, Social Services & Public Safety (2012) 'Physical and Sensory Disability Strategy and Action Plan 201-2015', Belfast: DHSSPS.

¹¹⁹ Public Authorities subject to the Disability Duties under section 49A of the Disability Discrimination Act 1995 (as amended by Article 5 of the Disability Discrimination (Northern Ireland) Order 2006) (these include all the public sector health bodies) are required to outline, in a Disability Action Plan, appropriate and effective action measures, including measures to provide training and guidance to employees and office holders on the disability equality legislation and disability awareness i.e. this is a requirement pre-dating the UNCRPD.

¹²⁰ Department for Employment and Learning Disability Action Plan 2011-2014, pp.15-16; Department of Culture, Arts & Leisure Disability Action Plan 2010-2013, p. 10-13; Department of Agriculture and Rural Development Disability Action Plan 2010-2013, pp.12, 15 & 23; Department of Education Disability Action Plan 2013-2015, pp. 10, 13-14; Department of Enterprise, Trade & Investment Disability Action Plan, pp.7-8 & 10; Department of Health, Social Services & Public Safety Disability Action Plan 2012-2014, pp.9-11 & 18; Department of the Environment Disability Action Plan 2012-2014, pp.12-13 & 16-17; Department of Justice Disability Action Plan 2012-2015, pp.16-20;

monitored.¹²¹ It is not clear how much impact such training actually has on attitudes towards people with disabilities since, at the time of writing, the authors were unaware that any such training programmes existed.

Stakeholder engagement

Awareness-raising continues to be a significant issue and was raised in the stakeholder engagement events. The continued importance of awareness-raising as a cross-cutting theme was also reiterated at the Expert Seminar. Some of the comments across the events included:

- A need to commence awareness-raising with children in the education system;
- A need for awareness-raising on social vs. medical model of disability;
- A need to raise awareness of UNCRPD among disabled people using accessible formats (e.g. plain English, sign language etc.);
- A need for greater awareness among service providers on how to access various forms of support;
- Service providers need to be aware of the diversity of people's needs;
- Awareness-raising campaigns to challenge negative stereotypes should be developed, including with respect to mental health; and
- There is a need for capacity building on how to use the UNCRPD and what it means.

Department for Regional Development Disability Action Plan 2013-14, pp.11-12 & 14; Department for Social Development Disability Action Plan 2011-2013, pp.13-16; and Department of Finance & Personnel Disability Action Plan 2010-2013, pp.7-9.

¹²¹ Department for Employment and Learning Equality Scheme 2011, pp.21-24; Department of Culture, Arts & Leisure Equality Scheme 2011, pp. 30-35; Department of Agriculture and Rural Development Equality Scheme 2011, pp.32-36; Department of Education Equality Scheme 2013, pp.19-23; Department of Enterprise, Trade & Investment Equality Scheme 2012, pp.23-27; Department of Health, Social Services & Public Safety Equality Scheme, pp.33-36; Department of the Environment Equality Scheme 2012, pp.23-31; Department of Justice Equality Scheme 2012, pp.26-28; Department for Regional Development Equality Scheme 2011, pp.29-33; Department for Social Development Equality Scheme 2013, pp.21-23; Department of Finance & Personnel Equality Scheme 2011, pp.23-27; and The Office of the First Minister and Deputy First Minister Equality Scheme 2011, pp.40-42.

Any significant gaps or shortfalls in Northern Ireland public policy and programmes

Article 8 remains a significant cross-cutting theme and one that was understood to impact on other rights such as the ability to access services and quality of services provided by public bodies. The positive obligations on the state party as contained in article 8 are in many ways key to the fulfilment of other rights in the UNCRPD.

Awareness-raising needs to be more systematic and coordinated and should be aimed at addressing negative stereotypes of people with disabilities by the general public, including negative perceptions of children with disabilities in relation to adoption. Training programmes or awareness-raising strategies should be developed in conjunction with people with disabilities. Education and training on the UNCRPD is also needed. It is not clear what impact any existing awareness raising programmes have had as, at the time of writing, there was no evaluative overview of the impact of either training or awareness raising programmes by public authorities in the public domain.

7.5 Article 9: Accessibility

Jurisprudence of the UN Committee on the Rights of Persons with Disabilities

A number of key themes have emerged from the UN Committee's Concluding Observations to date:

- The need for effective mechanisms to oversee and evaluate compliance with accessibility legislation;¹²²
- The need to address unequal access across provinces/municipalities and in rural/urban areas;¹²³
- The need to allocate resources to facilitate compliance;¹²⁴

¹²² CRPD/C/ARG/CO/1 Concluding Observations: Argentina, at para 17; CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 23; CRPD/C/HUN/CO/1 Concluding Observations: Hungary, at para 23; CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 24; CRPD/C/PER/CO/1 Concluding Observations: Peru, at para 21; and CRPD/C/ESP/CO/1 Concluding Observations: Spain, at para 27.

¹²³ CRPD/C/ARG/CO/1 Concluding Observations: Argentina, at para 17; CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 23; CRPD/C/CHN/CO/1 Concluding Observations: China, at para 18; CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 23; CRPD/C/PER/CO/1 Concluding Observations: Peru, at para 21; and CRPD/C/ESP/CO/1 Concluding Observations: Spain, at para 27.

- The need to improve accessibility of information and communications (including media);¹²⁵ and
- Accessibility standards should not be restricted by size, capacity, or places most frequented by people with disabilities.¹²⁶

In addition to the Concluding Observations, the UN Committee also issued a draft General comment on Article 9¹²⁷ on 25 November 2013 which highlighted the normative content, States parties' obligations, and intersectional issues pertaining to accessibility.

The UN Committee on the Rights of Persons with Disabilities has also addressed the issue of accessibility in its jurisprudence. In the case of Szilvia Nyusti, Péter Takács and Tamás Fazekas v. Hungary¹²⁸ (communication No. 1/2010, Views adopted on 16 April 2013), the UN Committee was of the view that that all services open or provided to the public must be accessible in accordance with the provisions of Article 9 of the UNCRPD.

CRPD/C/AUS/CO/1 Concluding Observations: Australia, at para 21; CRPD/C/HUN/CO/1 Concluding Observations: Hungary, at para 23; CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 24; CRPD/C/ESP/CO/1 Concluding Observations: Spain, at para 28; and CRPD/C/TUN/CO/1 Concluding Observations: Tunisia, at para 21.

¹²⁵ CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 23; CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 24; CRPD/C/ESP/CO/1 Concluding Observations: Spain, at para 27; and CRPD/C/TUN/CO/1 Concluding Observations: Tunisia, at para 20.

¹²⁶ CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 24; CRPD/C/CHN/CO/1 Concluding Observations: China, at para 18; and CRPD/C/TUN/CO/1 Concluding Observations: Tunisia, at para 20.

¹²⁷ United Nations Committee on the Rights of Persons with Disabilities (2013) CRPD/C/11/3 'General comment on Article 9: Accessibility'.

¹²⁸ CRPD/C/9/D/1/2010, Communication No. 1/2010, Views adopted on 16 April 2013. The State party was called upon to ensure that blind persons had access to automatic teller machines (ATMs). The UN Committee recommended, inter alia, that the State party should establish 'minimum standards for the accessibility of banking services provided by private financial institutions for persons with visual and other types of impairments', 'create a legislative framework with concrete, enforceable and time-bound benchmarks for monitoring and assessing the gradual modification and adjustment by private financial institutions of previously inaccessible banking services provided by them into accessible ones' and 'ensure that all newly procured ATMs and other banking services are fully accessible for persons with disabilities' (para. 10.2 (a)).

The UK State Party Report and the NI Executive Contribution to it

The Northern Ireland Executive's Contribution to the UK Government Report identified the following as addressing Article 9: Planning (NI) Order 1991;¹²⁹ Code of Practice for Access for the Disabled to Buildings;¹³⁰ Accessible Transport Strategy (2005);¹³¹ and the Quality Standards for Health and Social Care (2006).¹³² The UK State Party Report also acknowledged the half-fare concessions on public transport in NI (and free travel for people who are blind or receive the War Disablement Pension) and the existence of the Inclusive Mobility Transport Advisory Committee (IMTAC).¹³³

Northern Ireland Disability Strategy 2012-2015

The Disability Strategy addresses Article 9 in strategic priority 5 which aims to eliminate the barriers in the physical environment that limit full participation in all areas of life.¹³⁴ However, no further specific actions or targets are established and it is not clear how these priorities are to be achieved. The Disability Strategy linked the following Programme for Government actions to Article 9:

- Introduce and support a range of initiatives aimed at reducing fuel poverty;¹³⁵
- Publish and implement a Childcare Strategy;¹³⁶
- Delay domestic water charges;¹³⁷

¹²⁹ Planning (NI) Order (1991), available at <http://www.legislation.gov.uk/nisi/1991/1220/contents>.

¹³⁰ Disability Rights Commission (2006) 'Code of Practice: Rights of Access: services to the public, public authority functions, private clubs and premises', Norwich: TSO.

¹³¹ Department for Regional Development (2005) 'Accessible Transport Strategy', Belfast: DRD.

¹³² Northern Ireland Executive (2011) 'Northern Ireland Executive's Contribution to the UK Government Report to the United Nations Committee', at 11-12, available at

http://www.ofmdfmi.gov.uk/executives_contribution_to_the_uk_government_report_to_the_united_nations_committee_-_amended.pdf (Last visited 17 January 2014).

¹³³ CRPD/C/GBR/1, 'Consideration of Reports Submitted by States Parties Under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland', 24 November 2011, at para 98.

¹³⁴ Office of the First Minister and Deputy First Minister (2013) 'The Disability Strategy 2012-2015', Belfast: OFMDFM, p.17.

¹³⁵ *Ibid*, p.36.

¹³⁶ *Ibid*, p.37.

¹³⁷ *Ibid*, p.39.

- Establish an advisory group to assist Ministers in alleviating hardship including any implications of Welfare Reform;¹³⁸
- Introduce programmes to address chronic condition management;¹³⁹
- Introduce package to tackle rural poverty and social and economic isolation in the next three years;¹⁴⁰
- Complete the construction of the new Police, Prison and Fire Training College;¹⁴¹
- Seek local agreement to reduce the number of “peace walls”;¹⁴²
- Invest over £500m to promote sustainable modes of travel;¹⁴³
- Develop sports stadiums as agreed with the IFA, GAA and Ulster Rugby;¹⁴⁴
- Ensure all children have the opportunity to participate in shared education programmes by 2015 and substantially increase the number of schools sharing facilities by 2015;¹⁴⁵
- Include Social Clauses in public procurement contracts;¹⁴⁶
- Improve online access to government services;¹⁴⁷ and
- Improve patient and client outcomes and access to new treatments and services.¹⁴⁸

For many of the above actions, the link between the PfG and the requirements of the UNCRPD is unclear or weak.

¹³⁸ *Ibid*, p.39.

¹³⁹ *Ibid*, p.40.

¹⁴⁰ *Ibid*, p.41.

¹⁴¹ *Ibid*, p.47.

¹⁴² *Ibid*, p.48.

¹⁴³ *Ibid*, p.49.

¹⁴⁴ *Ibid*, p.50.

¹⁴⁵ *Ibid*, p.51.

¹⁴⁶ *Ibid*, p.52.

¹⁴⁷ *Ibid*, p.53.

¹⁴⁸ *Ibid*, p.53

Reconsideration of key Northern Ireland policies and programmes

The 2012 Report highlighted manufactured goods, physical access, internet-based information, and staff attitudes and training as key areas within Article 9.¹⁴⁹ The Autism Strategy includes two strategic priorities relating to removing barriers to access and increasing accessible/inclusive communications.¹⁵⁰ The Physical and Sensory Disability Strategy recommends enhancing access to information, advice, and advocacy,¹⁵¹ and The Bamford Action Plan 2012-2015 called on DHSSPS to improve access to advice and information by March 2015.¹⁵² However there is no detail on the extent to which these have been or will be achieved.

The Accessible Transport Strategy Action Plan 2012-2015 identified seven strategic objectives including: managing the transition to a fully accessible transport network; ensuring that DDA requirements are met and affordable adjustments are made; developing an integrated, fully accessible transport system including buses, trains, taxis, and private and community transport services; enabling disabled people to travel safely using private transport; addressing attitudinal barriers to transport use; and ensuring that information for all public transport services is available in a range of formats, and providing assistance with travel costs.¹⁵³

A formal investigation by the ECNI in 2008 into the accessibility of health information in Northern Ireland for people with a learning disability highlighted that written information was generally not produced in an accessible format suitable for people with a learning disability; that healthcare professionals did not adjust their communication style for people with a learning disability; and that there was a lack of familiarity of the needs of people with a learning disability by health professionals.¹⁵⁴

¹⁴⁹ Harper, C, S McClenahan, B Byrne & H Russell (2012) 'Disability Programmes and Policies: How Does Northern Ireland Measure Up?', Belfast: Equality Commission for Northern Ireland, p.93-106.

¹⁵⁰ Department of Health, Social Services & Public Safety (2013) 'The Autism Strategy (2013-2020) and Action Plan (2013-2016)', Belfast: DHSSPS, p.53.

¹⁵¹ Department of Health, Social Services & Public Safety (2012) 'Physical and Sensory Disability Strategy and Action Plan 201-2015', Belfast: DHSSPS, p.86.

¹⁵² Department of Health, Social Services & Public Safety (2012) 'Delivering the Bamford Vision: The Response of the Northern Ireland Executive to the Bamford Review of Mental Health and Learning Disability Action Plan 2012-2015', Belfast: DHSSPS, p.46.

¹⁵³ DRD (2012) 'Accessible Transport Strategy Action Plan 2012-2015', Belfast: DRD, p.7-8.

¹⁵⁴ Equality Commission for Northern Ireland (2008) 'Formal Investigation: The Accessibility of Health Information for People with a Learning Disability in Northern Ireland', available at

This report was updated in 2013 and indicated that health services in the five years under review had taken a number of positive steps to enhance accessibility for people with a learning disability; however some barriers to communication remained, particularly where there was time constraints. The report concluded that it will take further time for the overall benefits of policies and strategies to be seen.¹⁵⁵

The Disability Action Plans of the Department of Culture, Arts & Leisure (DCAL), the Department of Agriculture and Rural Development (DARD), the Department for Enterprise, Trade & Investment (DETI), the Department of the Environment (DOE) and the Department of Justice (DOJ) all make commitments to improve the accessibility of the services they provide in their Disability Action Plans.¹⁵⁶ The Departmental Equality Schemes also highlight the commitments to improving access to services.¹⁵⁷

Stakeholder engagement

Accessibility is viewed as one of the most important cross-cutting themes of the UNCRPD and was discussed in relation to physical access and access to information, advice, advocacy, and assistive devices at all of the stakeholder engagement events. For example, individuals with disabilities expressed difficulties in accessing equipment and new technologies to meet individual needs and lifestyle choices – something which acted as a barrier to a range of other rights including

<http://www.equalityni.org/Delivering-Equality/Addressing-inequality/Health-social-care/Research-investigations>.

¹⁵⁵ Equality Commission for Northern Ireland (2013) 'Review of the Formal Investigation into the Accessibility of Health Information for people with a Learning Disability in Northern Ireland', available at <http://www.equalityni.org/Delivering-Equality/Addressing-inequality/Health-social-care/Research-investigations>.

¹⁵⁶ Department of Culture, Arts & Leisure Disability Action Plan 2010-2013, pp. 9 & 14; Department of Agriculture and Rural Development Disability Action Plan 2010-2013, p.18; Department of Enterprise, Trade & Investment Disability Action Plan, p.10; Department of the Environment Disability Action Plan 2012-2014, p.14; and Department of Justice Disability Action Plan 2012-2015, p.22.

¹⁵⁷ Department for Employment and Learning Equality Scheme 2011, pp.25-26; Department of Culture, Arts & Leisure Equality Scheme 2011, pp.37-38; Department of Agriculture and Rural Development Equality Scheme 2011, pp.38-39; Department of Education Equality Scheme 2013, pp.25-27; Department of Enterprise, Trade & Investment Equality Scheme 2012, p.29; Department of Health, Social Services & Public Safety Equality Scheme 2012, p.29; Department of the Environment Equality Scheme 2012, p.33; Department of Justice Equality Scheme 2012, p.30; Department for Regional Development Equality Scheme 2011, pp.35-36; Department for Social Development Equality Scheme 2013, p.25; Department of Finance & Personnel Equality Scheme 2011, p.29; and The Office of the First Minister and Deputy First Minister Equality Scheme 2011, pp.42-43.

health and participation. Other participants expressed concern that even when invited to attend advisory board meetings, these were sometimes held in inaccessible locations. As this is a cross-cutting theme, it should be considered in conjunction with articles 11 to 31.

Any significant gaps or shortfalls in Northern Ireland public policy and programmes

As indicated through stakeholder engagement above, accessibility remains a major barrier to full participation. Among the issues that have been identified most recently are barriers to transport for people with learning disabilities and physical disabilities.¹⁵⁸ A report carried out on behalf of the Equality Commission in 2013 also concluded that physical access into service premises remains an issue, especially for smaller service providers. Accessible transport, parking provision and the nature of kerbs and pavements were identified as key barriers to getting to services.¹⁵⁹ In particular it identified a need for improvements in how service premises are used, how information is conveyed and the knowledge of people providing the service.¹⁶⁰ More needs to be done to ensure the implementation of policies and programmes aimed at addressing Article 9, with particular relevance to improving public transport (see also Article 20), access to information (see also Article 21), and the physical environment.

7.6 Article 10: Right to life

Jurisprudence of the UN Committee on the Rights of Persons with Disabilities

The UN Committee on the Rights of Persons with Disabilities in relation to Article 10 of the UNCRPD has established that the informed consent of all persons with

¹⁵⁸ Discussed by All Party Group on Learning Disability in March 2013 - <http://www.mencap.org.uk/northern-ireland/campaigns/all-party-group-learning-disability/all-party-group-march>.

¹⁵⁹ Adapt NI with BMKent consulting (2013) 'A baseline audit of accessibility to services in Northern Ireland for people with a disability', available at <http://www.equalityni.org/Research-investigations>.

¹⁶⁰ *Ibid.*

disabilities must be secured on all matters relating to medical treatment, especially the withdrawal of treatment, nutrition or other life support.¹⁶¹

The UK State Party Report and the NI Executive Contribution to it

The UK is satisfied that it is fulfilling its obligations under Article 10 of the UNCRPD.¹⁶² While there are no special provisions for persons with disabilities, such persons are awarded the same protection of their right to life from birth as non-disabled persons, including safeguards against arbitrary deprivation of life.¹⁶³

Northern Ireland generally reflects the right to life legislation of the rest of the UK; however, the State Party Report does not mention the different approaches to termination of pregnancy.¹⁶⁴ Northern Ireland's stricter approach to termination arguably better protects unborn children with disabilities. However, the issue is complex and is to be reassessed in 2014.¹⁶⁵

Concerns were expressed in the 2012 Report on the issue of euthanasia and assisted suicide.¹⁶⁶ The State Party Report stresses that these acts remain unlawful within the UK.¹⁶⁷ Furthermore, it is required that disability is not the sole factor in

¹⁶¹ CRPD/C/ESP/CO/1, 'Consideration of Reports Submitted by State Parties Under Article 35 of the Convention: Concluding Observations of the Committee on the Rights of Persons with Disabilities', 19 October 2011, at para 30.

¹⁶² CRPD/C/GBR/1, 'Consideration of Reports Submitted by States Parties Under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland', 24 November 2011, at para 100.

¹⁶³ CRPD/C/GBR/1, 'Consideration of Reports Submitted by States Parties Under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland', 24 November 2011, at para 100.

¹⁶⁴ Northern Ireland Executive (2011) 'Northern Ireland Executive's Contribution to the UK Government Report to the United Nations Committee', available at http://www.ofmdfmi.gov.uk/executives_contribution_to_the_uk_government_report_to_the_united_nations_committee_-_amended.pdf (Last visited 17 January 2014).

¹⁶⁵ BBC News (5 December 2013) 'Abortion: Justice Minister David Ford to consult on changing NI's Laws', available at <http://www.bbc.co.uk/news/uk-northern-ireland-25230152> (Last visited 17 January 2014).

¹⁶⁶ Harper, C, S McClenahan, B Byrne & H Russell (2012) 'Disability Programmes and Policies: How Does Northern Ireland Measure Up?', Belfast: Equality Commission for Northern Ireland, pp.115-116.

¹⁶⁷ CRPD/C/GBR/1, 'Consideration of Reports Submitted by States Parties Under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland', 24 November 2011, at para 100.

clinical judgments, and that decisions are made with the intention of prolonging life, not bringing about the patient's death.¹⁶⁸

Northern Ireland Disability Strategy 2012-2015

There are no provisions expressly aimed at implementing Article 10 in the Northern Ireland Disability Strategy.¹⁶⁹ Given this, it is difficult to see how the NI Executive can be confident that the right to life of disabled people in NI is being effectively protected.

Reconsideration of key Northern Ireland policies and programmes

In the 2012 research it was emphasised that changes were required to make health care more accessible for people with disabilities.¹⁷⁰ Improving patient and client outcomes and access to new treatments and services, and providing dedicated chronic condition management programmes have been identified as priorities.¹⁷¹ The need to conduct robust research to underpin measures to fulfil this right remains outstanding.

The 2012 research also raised the issue of suicide.¹⁷² The 2006 'Protect Life' Strategy established a crisis response helpline, delivered awareness-raising public information campaigns, regional and local training programmes, and developed community based suicide prevention initiatives.¹⁷³ All of which have factored in

¹⁶⁸ General Medical Council (2011) 'Treatment and Care Towards the End of Life: Good Practice in Decision Making', at 12; CRPD/C/GBR/1, 'Consideration of Reports Submitted by States Parties Under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland', 24 November 2011, at para 100.

¹⁶⁹ Office of the First Minister and Deputy First Minister (2013) 'A Strategy to improve the lives of people with disabilities 2012-2015', Belfast: OFMDFM.

¹⁷⁰ Harper, C, S McClenahan, B Byrne & H Russell (2012) 'Disability Programmes and Policies: How Does Northern Ireland Measure Up?' Equality Commission for Northern Ireland, p.111-114.

¹⁷¹ 'A Strategy to Improve the Lives of People with Disabilities 2012-2015' (Office of the First Minister and Deputy First Minister, 2012), at Table 1.

¹⁷² Harper, C, S McClenahan, B Byrne & H Russell (2012) 'Disability Programmes and Policies: How Does Northern Ireland Measure Up?' Equality Commission for Northern Ireland, p.114-116.

¹⁷³ 'Protect Life: A Shared Vision – The Northern Ireland Suicide Prevention Strategy 2006-2011' (Department of Health, Social Services and Public Safety, October 2006); 'Protect Life: A Shared

accessibility in line with Article 9 of the UNCRPD. Nevertheless, with suicides continuing to rise the Protect Life Strategy was redeveloped in 2012. It maintained the original long-term goal of reducing suicide rates in Northern Ireland, extending the timeframe of 2011 to 2014 onwards, and introduced the additional aim of reducing the differential in the suicide rates between deprived and non-deprived areas.¹⁷⁴ It also incorporated elements of the Bamford Action Plans and pledged to promote a cross-departmental approach.¹⁷⁵ Consequently, a strategy on mental health and learning disability services was introduced.¹⁷⁶ The Strategy requires Care Plans to recognise the diverse needs of the service user, including their disability.¹⁷⁷ Crisis Response and Home Treatment Services and Child and Adolescent Mental Health Services have also opened. However, adequately addressing the risk of suicide among people with disabilities continues to be insufficiently dealt with. There is little evidence of how the key risk factors for people with disabilities,¹⁷⁸ isolation and post-conflict mental illness, are to be dealt with.¹⁷⁹ Without direct research identifying the differential impact on other equality groups, including people with disabilities, it becomes difficult to develop effective solutions.¹⁸⁰ The measures introduced to address isolation are discussed under Article 28.

Vision – The Northern Ireland Suicide Prevention Strategy 2012-March 2014’ (Department of Health, Social Services and Public Safety, 2012), at 3.

¹⁷⁴ ‘Protect Life: A Shared Vision – The Northern Ireland Suicide Prevention Strategy 2012-March 2014’ (Department of Health, Social Services and Public Safety, 2012), at 7.

¹⁷⁵ ‘Delivering the Bamford Vision: The Response of Northern Ireland Executive to the Bamford Review of Mental Health and Learning Disability – Action Plan 2009-2011’ (Department of Health, Social Services and Public Safety, October 2009); ‘Delivering the Bamford Vision: The Response of Northern Ireland Executive to the Bamford Review of Mental Health and Learning Disability – Action Plan 2012-2015’ (Department of Health, Social Services and Public Safety, November 2012).

¹⁷⁶ ‘Promoting Quality Care: Good Practice Guidance on the Assessment and Management of Risk in Mental Health and Learning Disability Services’ (Department of Health, Social Services and Public Safety, 2010).

¹⁷⁷ ‘Promoting Quality Care: Good Practice Guidance on the Assessment and Management of Risk in Mental Health and Learning Disability Services’ (Department of Health, Social Services and Public Safety, 2010), at 20.

¹⁷⁸ Harper, C, S McClenahan, B Byrne & H Russell (2012) ‘Disability Programmes and Policies: How Does Northern Ireland Measure Up?’, Belfast: Equality Commission for Northern Ireland, p.116.

¹⁷⁹ ‘Protect Life: A Shared Vision – The Northern Ireland Suicide Prevention Strategy 2012-March 2014’ (Department of Health, Social Services and Public Safety, 2012).

¹⁸⁰ Harper, C, S McClenahan, B Byrne & H Russell (2012) ‘Disability Programmes and Policies: How Does Northern Ireland Measure Up?’, Belfast: Equality Commission for Northern Ireland, p.115-116.; ‘Protect Life: A Shared Vision – The Northern Ireland Suicide Prevention Strategy 2012-March 2014’ (Department of Health, Social Services and Public Safety, 2012), at 55.

Stakeholder engagement

Article 10 was not expressly mentioned during the stakeholder events. It was highlighted that the policy in Northern Ireland was silent on the ‘Troubles’ and that this runs the risk of increased mental health problems and suicide.¹⁸¹

Any significant gaps or shortfalls in Northern Ireland public policy and programmes

There is evidence of improvement in terms of accessibility to information and services, and better resources for mental illness and learning disabilities. Yet sufficient efforts are not being made to gain an *in-depth* understanding of the special requirements required to ensure full protection of the right to life for *all* people with disabilities. Therefore, the conclusion remains the same – further debate is needed. This requires research and/or monitoring programme(s) to supply the disaggregated information necessary to conduct an informed debate.¹⁸² It is as yet unclear how the implementation of the ‘Transforming Your Care’¹⁸³ reform of health and social care in Northern Ireland will impact on people with disabilities. Without full consideration of all individual initiatives and effective monitoring the result can be inadequate and insufficient care. Therefore, there is a risk that a large-scale reform process that fails to be representative could be retrogressive with respect to the right to life of disabled people.

7.7 Article 11: Situations of risk and humanitarian emergencies

Jurisprudence of the UN Committee on the Rights of Persons with Disabilities

A number of key themes have emerged from the UN Committee’s Concluding Observations to date:

¹⁸¹ ‘Stakeholder Events Combined Notes’ in Interim Report, p.28.

¹⁸² Harper, C, S McClenahan, B Byrne & H Russell (2012) ‘Disability Programmes and Policies: How Does Northern Ireland Measure Up?’, Belfast: Equality Commission for Northern Ireland. P.116-117.

¹⁸³ Health and Social Care Board (2013) Transforming Your Care: Vision to Action, Belfast: HSCB.

- People with disabilities should be consulted in the establishment of national emergency management strategies to ensure inclusion;¹⁸⁴
- State parties should provide the UN Committee with information on specific measures taken to ensure that the necessary support is available to disabled people in the event of a disaster/emergency;¹⁸⁵ and
- Information on emergency mechanisms/plans needs to be made available in accessible formats.¹⁸⁶

The UK State Party Report and the NI Executive Contribution to it

The Northern Ireland Executive's Contribution to the UK Government Report does not mention Article 11. The UK State Party Report does not mention Northern Ireland under Article 11 and states that Public Sector Equality Duties in Britain require emergency plans to consider the needs of disabled people and that there is ongoing work to ensure that emergency related information is available in accessible formats.¹⁸⁷ It also states that 'the UK' worked with the Office of the UN High Commissioner for Refugees on protection and assistance for disabled refugees¹⁸⁸ and has funded projects run by Handicap International.¹⁸⁹

Northern Ireland Disability Strategy 2012-2015

The Disability Strategy attributes two Programme for Government targets to Article 11:

¹⁸⁴ CRPD/C/AUS/CO/1 Concluding Observations: Australia, at para 23; CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 26; CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 28; and CRPD/C/ESP/CO/1 Concluding Observations: Spain, at para 32.

¹⁸⁵ CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 26.

¹⁸⁶ CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 26.

¹⁸⁷ CRPD/C/GBR/1, 'Consideration of Reports Submitted by States Parties Under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland', 24 November 2011, at para 101.

¹⁸⁸ *Ibid*, at para 102.

¹⁸⁹ *Ibid*, at para 103.

- Improve community safety by tackling anti-social behaviour;¹⁹⁰ and
- Introduce a package of measures aimed at improving safeguarding outcomes for Children and Vulnerable Adults.¹⁹¹

This attribution demonstrates a lack of understanding of the scope and meaning of article 11, possibly through a misunderstanding of the nature of the ‘situations of risk’ which article 11 aims to be address.

Reconsideration of key Northern Ireland policies and programmes

The Emergency Planning Standard 2013¹⁹² states that although emergency preparedness plans should consider the obligations of Section 75 of the Northern Ireland Act 1998,¹⁹³ the Human Rights Act 1998,¹⁹⁴ and the Disability Discrimination Act 1995 (as amended)¹⁹⁵ to make provisions for disabled people, it may be necessary for health and social care organisations to ‘prioritise actions and resources which will provide the most benefit for the greatest number of people’.¹⁹⁶ The Northern Ireland Civil Contingencies Framework acknowledges the need for information pertaining to emergencies to be made available in alternative formats¹⁹⁷ and for consulting with disabled people in developing emergency management strategies.¹⁹⁸

Stakeholder engagement

Article 11 was not mentioned during the stakeholder engagement events.

¹⁹⁰ Office of the First Minister and Deputy First Minister (2013) ‘The Disability Strategy 2012-2015’, Belfast: OFMDFM, p.45.

¹⁹¹ *Ibid*, p.50.

¹⁹² Department of Health, Social Services & Public Safety (2013) ‘Emergency Planning Standard’, Belfast: DHSSPS, available at: <http://www.dhsspsni.gov.uk/cas-ep.pdf>.

¹⁹³ Northern Ireland Act (1998), available at: <http://www.legislation.gov.uk/ukpga/1998/47/contents>.

¹⁹⁴ Human Rights Act (1998), available at: <http://www.legislation.gov.uk/ukpga/1998/42/contents>.

¹⁹⁵ Disability Discrimination Act 1995, available at: <http://www.legislation.gov.uk/ukpga/1995/50/contents>; and Disability Discrimination (NI) Order 2006, available at: <http://www.legislation.gov.uk/nisi/2006/312/contents/made>.

¹⁹⁶ Department of Health, Social Services & Public Safety (2013) ‘Emergency Planning Standard’, Belfast: DHSSPS, pp.4-5.

¹⁹⁷ Office of the First Minister and Deputy First Minister (2011) ‘Northern Ireland Civil Contingencies Framework’, Belfast: OFMDFM, at para 214.

¹⁹⁸ *Ibid*, at para 120.

Any significant gaps or shortfalls in Northern Ireland public policy and programmes

The needs of disabled people should be addressed in emergency management strategies particularly in regards to the potential conflict arising from the prioritisation of actions and resources aimed at benefitting ‘the greatest number of people’ as outlined in the Emergency Planning Standard. Disabled people should be consulted in the development of these strategies. This, along with the availability of information in alternative formats should be monitored. Without extensive and sustained consideration of the needs of disabled people by a state party in its emergency planning, it is difficult to see how their article 11 rights would be respected in the event of an actual emergency.

7.8 Article 12: Equal recognition before the law

Jurisprudence of the UN Committee on the Rights of Persons with Disabilities

The UN Committee on the Rights of Persons with Disabilities has issued a General Comment No. 1 on Article 12 *Equal recognition before the law*.¹⁹⁹ The interpretation of Article 12 put forward in this comment is deeply disputed.²⁰⁰ This makes it difficult to fully analyse the compatibility with Article 12 of Northern Ireland policies and programmes (and the laws which ground them) without an extended consideration of the viability of the UN Committee’s interpretation which is beyond the scope of this project. The academic literature to date is often unhelpful in either being somewhat controversial or in misunderstanding the functional approach to mental capacity legislation which has taken in England and Wales and Scotland and is being followed in the law reform processes in both Northern Ireland and the Republic of Ireland.

Notwithstanding the above caveats, the UN Committee on the Rights of Persons with Disabilities has examined and issued Concluding Observations to date on 10 States

¹⁹⁹ The text of this General Comment is available at:
<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx>

²⁰⁰ The 73 submissions in response to the Committee’s consultation on Draft General Comment on article 12 are available at:
<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/DGCArticles12And9.aspx>.

which do contain useful guidance as to the kinds of policies and programmes Article 12 requires. These do not depend on choosing one of the contested interpretations of article 12 over another. The right to equal recognition before the law might generally be understood as a right requiring respect and protection by the state. However, in its requirements for support for decision-making, article 12 is a good example of how for people with disabilities specific measures are necessary for the full realisation of this right for them. The clear messages emerging in this jurisprudence with respect to the policies and programmes necessary to give full effect to Article 12 include:

- Training at all levels of the state and all state actors on ‘the recognition of the legal capacity of persons with disabilities and on the primacy of supported decision-making mechanisms in the exercise of legal capacity’;²⁰¹
- The development of models of support for decision making;²⁰²
- The need to amend Civil Code to adequately guarantee the exercise of civil rights, particularly the right to marry;²⁰³
- Gathering of ‘data and information on persons with disabilities who have been declared legally incapable’, including those who are ‘currently undocumented’;²⁰⁴ and
- Review of ‘all current legislation which is based on a substitute decision-making model that deprives persons with disabilities of their legal capacity’.²⁰⁵

²⁰¹ CRPD/C/ARG/CO/1 Concluding Observations: Argentina, at para 20; CRPD/C/AUS/CO/1 Concluding Observations: Australia, at para 26; CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 28; CRPD/C/HUN/CO/1 Concluding Observations: Hungary, at para 26; and CRPD/C/TUN/CO/1 Concluding Observations: Tunisia, at para 23.

²⁰² CRPD/C/ARG/CO/1 Concluding Observations: Argentina, at para 20; CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 28; CRPD/C/CHN/CO/1 Concluding Observations: China, at para 22; and CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 30.

²⁰³ CRPD/C/PER/CO/1 Concluding Observations: Peru, at para 27.

²⁰⁴ CRPD/C/PER/CO/1 Concluding Observations: Peru, at para 23.

²⁰⁵ CRPD/C/ARG/CO/1 Concluding Observations: Argentina, at para 20; CRPD/C/AUS/CO/1 Concluding Observations: Australia, at para 25; CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 28; CRPD/C/CHN/CO/1 Concluding Observations: China, at para 22; CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 28; CRPD/C/HUN/CO/1 Concluding Observations: Hungary, at para 26; CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 30; CRPD/C/PER/CO/1 Concluding Observations: Peru, at para 25; CRPD/C/ESP/CO/1 Concluding Observations: Spain, at para 34; and CRPD/C/TUN/CO/1 Concluding Observations: Tunisia, at para 23.

UK State Party Report and NI Executive Contribution to it

The NI Contribution to the UK State Party Report emphasises the significance of the Mental Capacity Bill, although the timetable has shifted considerably.²⁰⁶ The Contribution claims that the Mental Capacity Bill also supports Articles 5, 7, 8, 12, 14, 16, 17, 19, and 25.²⁰⁷ The Mental Capacity Bill does not feature in the UK State Party Report, where only the Mental Health (NI) Order 1986 is referenced.²⁰⁸ Were the UK State Party Report to be written now, it is highly likely it would refer to the NI law reform process and the emerging shape of the Mental Capacity Bill. The compatibility of the NI Mental Capacity Bill proposals is highly likely to be an issue during the UK examination process.

Northern Ireland Disability Strategy 2012-2015

The Mental Capacity Bill receives passing reference in the Disability Strategy in connection with Article 12 under the Theme ‘Justice and Community Safety’.²⁰⁹ Article 12 is also referenced with respect to the Programme for Government Commitment on ‘Access to justice (DoJ)’.²¹⁰ Given the wide scope of Article 12, its connection with a wide range of the rights in the UNCRPD, and its relative ‘novelty’ in human rights terms, one might have expected it to feature more prominently and extensively in the Strategy. Improving access to justice is the only Programme for Government commitment identified in the Disability Strategy as relevant to Article 12.²¹¹

²⁰⁶ The NI Executive Contribution refers to the Mental Capacity Bill as ‘planned for enactment in 2013’, whereas the current timetable is for public consultation in spring 2014 followed by enactment after the Assembly passes the Mental Capacity Bill in March 2016.

²⁰⁷ Northern Ireland Executive (2011) ‘Northern Ireland Executive’s Contribution to the UK Government Report to the United Nations Committee’, p.13.

²⁰⁸ CRPD/C/GBR/1 ‘Consideration of Reports Submitted by States Parties under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland’, at para 111.

²⁰⁹ Office of the First Minister and Deputy First Minister (2013) ‘A Strategy to improve the lives of people with disabilities 2012-2015’, Belfast: OFMDFM, p.23.

²¹⁰ *Ibid*, p.46.

²¹¹ Office of the First Minister and Deputy First Minister (2013) ‘The Disability Strategy 2012-2015’, Belfast: OFMDFM, p.46.

Reconsideration of key Northern Ireland policies and programmes

The key area of change with respect to Article 12 in Northern Ireland is the ongoing development of the Mental Capacity Bill. There are currently no policies and programmes in place in Northern Ireland to address the six kinds of policies and programmes identified in the UN Committee jurisprudence to date. The development of the proposals for the Mental Capacity Bill and the UN Committee jurisprudence in Concluding Observations since the 2012 research has enabled significant gaps in policies and programmes to be identified.

Stakeholder engagement

It was commented at a stakeholder meeting that the ‘Mental Capacity Bill is good in principle but will be difficult to implement’.²¹² The delay in implementing the Mental Capacity Bill was a repeated concern:

‘The development of the new capacity legislation seems to be taking a long time. It is worrying that the issue may be being ignored in the meantime because ‘it is being drafted’. Are the potential medical diagnostic tests suggested for determining capacity going against the UNCRPD?’²¹³

As mentioned above, the correct interpretation of Article 12 remains a matter of deep dispute²¹⁴ and the above comment on ‘medical diagnostic tests’ does not adequately reflect the policy positions of the Mental Capacity Bill. However, it is worth noting in the light of this stakeholder comment that DHSSPS and Health and Social Care (H&SC) Trust policies on the appropriate ways of assessing capacity will be needed. There will also be a need to revise policies such as the DHSSPS Consent Guides for Healthcare Professionals²¹⁵ in the light of the Mental Capacity Bill. The Mental Capacity Bill only received passing mention at the Expert Seminar, but this must be considered in the context of the detail of provisions not being generally available.

²¹² ‘Stakeholder events Combined Notes’ in Interim Report, p. 20.

²¹³ ‘Stakeholder events Combined Notes’ in Interim Report, p. 28.

²¹⁴ See the wide range of views in the responses to the UN Committee on the Rights of Persons with Disabilities Consultation on the Draft General Comment on Article 12, available at: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/DGCArticles12And9.aspx>

²¹⁵ These are available at: http://www.dhsspsni.gov.uk/public_health_consent

Any significant gaps or shortfalls in Northern Ireland public policy and programmes

These are considered in turn below in the light of the UN Committee jurisprudence:

1. **Training:** informal discussions between the research team and the relevant officials suggests that planning is underway within both responsible Northern Ireland Departments²¹⁶ to resource training on the Mental Capacity Bill in advance of its implementation, but it is not yet clear what the exact scope and coverage of such training will be, nor who will actually deliver such training programmes. It will not be sufficient to have training programmes which focus only on the legal requirements for interventions to be lawfully carried out. To comply with the UNCPRD, and fulfil the obligations of article 12, such training will need to focus on the obligations in the Mental Capacity Bill to provide support to people in the exercise of their legal capacity²¹⁷ and hence possibly avoid coming under the provisions of the Mental Capacity Bill.
2. **Development of models of support for decision-making:** compliance with the UNCPRD will require a programme of development of models for support for decision making appropriate for Northern Ireland and its legal framework with respect to legal capacity (see point 2 above).
3. **Setting up decision making support services:** the UN Committee clearly sees a need for dedicated support services for decision making. These would need to be based on the models developed specifically for Northern Ireland (see point 2 above) and be aimed at maximising decision-making capacity, not at providing support for those who already deemed to lack mental capacity (e.g. as independent advocates are envisaged in the Mental Capacity Bill²¹⁸). The supports provided as safeguards within the Mental Capacity Bill will not meet what the UN Committee is saying is required. The DHSSPS 'Developing

²¹⁶ Department of Health, Social Services & Public Safety and Department of Justice

²¹⁷ See in particular clauses 1 (3) and 4 of the Draft Mental Capacity Bill (Civil Provisions), available at: http://www.dhsspsni.gov.uk/annex_a_-_draft_mental_capacity_bill__civil_provisions_.pdf

²¹⁸ See in particular Part 2 Chapter 5 and Part 4 of the Draft Mental Capacity Bill (Civil Provisions), available at: http://www.dhsspsni.gov.uk/annex_a_-_draft_mental_capacity_bill__civil_provisions_.pdf

Advocacy Services—A Guide for Commissioners’ (May 2012)²¹⁹ and provision of general advocacy services not tied to fulfilment of the requirements of the Mental Capacity Bill are contributions to the requirements for ‘decision making support services’. The Mental Capacity Bill does require that support measures be taken before someone can be found to lack capacity, but these are not currently tied to the provision of a specific service.

4. **‘Arrangements’ for the promotion of supported decision-making:** the UN Committee have not provided detail as to what they envisage such ‘arrangements’ to be. However, they are likely to be similar to those required under Article 8.
5. **Gathering of ‘data and information on persons with disabilities who have been declared legally incapable’:** this will require that the Mental Capacity Bill be accompanied by robust policies and programmes to monitor its use and implementation, including the collection of disaggregated data across H&SC Trusts and about its use at the level of ‘routine’ interventions. Loss of legal capacity under any other legislation will also need to be better recorded than currently takes place. Information is currently gathered about the use of the Mental Health (NI) Order 1986, but as this does not relate to decision making capacity, it does not fulfil this obligation.
6. **Review of ‘all current legislation which is based on a substitute decision-making model that deprives persons with disabilities of their legal capacity’:** the Mental Capacity Bill will only apply to people aged 16 years old and over and this clearly means that a review of the law relating to legal capacity of people with disabilities who are under 16 years old is required.²²⁰ A further review of legislation which deprives people of their legal capacity other than in the areas of health, welfare and finance covered by the Mental Capacity Bill is also required.

²¹⁹ Available at: <http://www.dhsspsni.gov.uk/Developing-Advocacy-Services-A-guide-for-Commissioners-May-2012.pdf>

²²⁰ The Draft Mental Capacity Bill (NI) Consultation document (DHSSPS, May 2014) commits to such a project, see para. 3.9 at pp. 38-39. The Consultation Document is available at: http://www.dhsspsni.gov.uk/mental_capacity_bill_consultation_paper.pdf

7.9 Article 13: Access to justice

Jurisprudence of the UN Committee on the Rights of Persons with Disabilities

A number of key themes have emerged from the UN Committee's Concluding Observations to date:

- Training programmes for all people involved in the legal system should include compulsory modules on working with people with disabilities;²²¹
- Legislation and policies should be amended/introduced to ensure access to justice for persons with disabilities and resources should be allocated to provide legal aid services and other forms of support;²²² and
- Persons with psychosocial disabilities should be ensured the same guarantees as others in the context of criminal proceedings, in particular mental health services should be provided on the basis of free and informed consent.²²³

The UK State Party Report and the NI Executive Contribution to it

The Northern Ireland Executive's Contribution to the UK Government Report identified the Mental Health Review Tribunal, the NI Legal Services Commission, the 'special measures' provision in the Criminal Evidence (NI) Order 1999, and the Appropriate Adults scheme as being of particular relevance to Article 13.²²⁴ This is also referred to in the UK State Party Report. The aforementioned 'measures' are highlighted as including provisions for the presence of a supporter, whose role is to reduce the witness' anxiety and stress when giving evidence, and permitting the

²²¹ CRPD/C/AUS/CO/1 Concluding Observations: Australia, at para 28; CRPD/C/CHN/CO/1 Concluding Observations: China, at para 24; and CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 30.

²²² CRPD/C/AUS/CO/1 Concluding Observations: Australia, at para 28 & 30; CRPD/C/CHN/CO/1 Concluding Observations: China, at para 24; CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 30; and CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 32.

²²³ CRPD/C/AUS/CO/1 Concluding Observations: Australia, at para 29; CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 30; and CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 32.

²²⁴ Northern Ireland Executive (2011) 'Northern Ireland Executive's Contribution to the UK Government Report to the United Nations Committee', pp.14-15. Available at

http://www.ofmdfmi.gov.uk/executives_contribution_to_the_uk_government_report_to_the_united_nations_committee_-_amended.pdf (Last visited 17 January 2014).

prosecutor to ask the witness some ‘warm up’ questions to help them relax before being cross-examined.²²⁵ The report also notes with respect to Northern Ireland that revised guidance for practitioners, including police officers, legal representatives and social workers, when interviewing vulnerable witnesses will be published in 2011, and will be accompanied by training.²²⁶

Northern Ireland Disability Strategy 2012-2015

The Disability Strategy states that Article 13 should be considered with articles 12 and 16 and dedicates strategic priority 17 to ensuring that disabled people are treated equally by the law, have access to justice, and can live safely in the community.²²⁷ Two Programme for Government commitments were identified in the Disability Strategy as relevant to Article 13:

- Tackle crime against older and vulnerable people by more effective and appropriate sentences and other measures;²²⁸ and
- Improve access to justice.²²⁹

Reconsideration of key Northern Ireland policies and programmes

The 2012 Report highlighted that the main reasons that disability claims are not made is the high financial costs, stress of the process, and lack of awareness of disabled people’s rights.²³⁰ It also discussed recent reports on disability hate crime in NI²³¹ and problems with stereotyping of disabled people as court witnesses.²³²

²²⁵ CRPD/C/GBR/1, ‘Consideration of Reports Submitted by States Parties Under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland’, 24 November 2011, at para 128.

²²⁶ *Ibid.*

²²⁷ Office of the First Minister and Deputy First Minister (2013) ‘The Disability Strategy 2012-2015’, Belfast: OFMDFM, p.23.

²²⁸ *Ibid*, p.43.

²²⁹ *Ibid*, p.46.

²³⁰ Harper, C, S McClenahan, B Byrne & H Russell (2012) ‘Disability Programmes and Policies: How Does Northern Ireland Measure Up?’, Belfast: Equality Commission for Northern Ireland, p.131.

²³¹ *Ibid*, p.133.

²³² *Ibid*, p.134.

Like the Disability Strategy, the Autism Strategy dedicated a strategic priority to ensuring that people are treated equally by the law, have access to justice, and can live safely in the community.²³³ It also recommends:

- Training for staff in criminal justice agencies to ensure understanding and awareness of autism;
- Guidance development to help professionals recognise, approach, and question someone with autism (launched February 2014);²³⁴ and
- Improving advocacy and support services for people with significant communication difficulties.²³⁵

As highlighted above, the Justice Act (Northern Ireland) 2011²³⁶ introduces measures to provide better support for people with disabilities (including the provision of a supporter and allowing the prosecutor to ask initial questions to relax the witness) and revised guidance for interviewing vulnerable witnesses.

The 'Criminal Justice Responses to Hate Crime in Northern Ireland' report²³⁷ (2012) looked at hate crime in Northern Ireland and recommended investigating why the figures of hate crime remain low, the progress made in implementing disability hate crime recommendations made in 2009,²³⁸ and how agencies work together to address disability hate crime.²³⁹

The Registered Intermediaries Schemes pilot was launched by the Department of Justice in May 2013 which assists vulnerable victims, witnesses, suspects and defendants with significant communication deficits to engage more effectively during

²³³ Department of Health, Social Services & Public Safety (2013) 'The Autism Strategy (2013-2020) and Action Plan (2013-2016)', Belfast: DHSSPS, p.73.

²³⁴ For more information, see <http://www.dojni.gov.uk/index/media-centre/ford-launches-new-autism-guide-for-criminal-justice-professionals.htm> (last accessed 3 March 2014).

²³⁵ *Ibid*, p.75.

²³⁶ Justice Act (Northern Ireland) 2011, available at: www.legislation.gov.uk/nia/2011/24/contents

²³⁷ Jarman, N (2012) 'Criminal Justice Responses to Hate Crime in Northern Ireland', Belfast: Institute for Conflict Research.

²³⁸ Vincent, F, K Radford, A Martynowicz. & N Jarman (2009) 'Hate Crime against People with Disabilities: A baseline study of experiences in Northern Ireland', Belfast: OFMDFM.

²³⁹ Jarman, N (2012) 'Criminal Justice Responses to Hate Crime in Northern Ireland', Belfast: Institute for Conflict Research, pp.6-10.

police interview and when giving evidence in court. The scheme is expected to last for 18 months.²⁴⁰

The Challenge Hate Crime Project (a partnership between the Prison Service of Northern Ireland and the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO))²⁴¹ is a three year pilot programme that was launched in April 2013 and aims to research hate crime (including disability) to develop a model to reduce the levels of hate crime incidents.²⁴²

Stakeholder engagement

Many of the participants with a learning disability said that they were afraid to go out alone and nearly all of the group talked of experiencing abuse by strangers (verbal, psychological, and in some cases, physical). Some were optimistic about a pilot scheme in Bangor, Co. Down aimed at improving relationships between the police and people with a learning disability. In a different session, concerns were raised about too many people with mental health problems in the criminal justice system and a lack of support for them.

Any significant gaps or shortfalls in Northern Ireland public policy and programmes

The introduction of the Appropriate Adult Scheme²⁴³ and improved support mechanisms in the Northern Ireland Justice Act are welcome, but hate crime remains a major concern for many people with disabilities and the recommendations from the 2012 ‘Criminal Justice Responses to Hate Crime in Northern Ireland’ report outlined previously remain valid (also see Section 7.12, which discusses Article 16).

²⁴⁰ More information is available at <http://www.dojni.gov.uk/registered-intermediary-schemes> (last visited 3 March 2014).

²⁴¹ NIACRO is an organisation working to reduce crime and its impact on people and communities. More information is available at: <http://www.niacro.co.uk/about-niacro/>.

²⁴² More information is available at <http://www.dojni.gov.uk/index/media-centre/justice-minister-and-niacro-launch-challenge-hate-crime-project-research-papers-2.htm> (last visited 3 March 2014).

²⁴³ For further information on this scheme, see: <http://www.mindwisenv.org/images/stories/NIAASLeaflet.pdf>

7.10 Article 14: Liberty and security of person

Jurisprudence of the UN Committee on the Rights of Persons with Disabilities

The UN Committee on the Rights of Persons with Disabilities is clear across its Concluding Observations to date that deprivation of liberty on the basis of disability is a breach of Article 14 of the UNCRPD.²⁴⁴ Its comments to date are framed in terms of an obligation to respect the right through not detaining on the basis of disability. It is not yet clear what kinds of policies and programmes the UN Committee might consider necessary to also protect and fulfil article 14.

The UN Committee considers that State Parties must establish ‘mandatory guidelines and practice to ensure that persons with disabilities in the criminal justice system are provided with appropriate supports and accommodation’.²⁴⁵

UK State Party Report and NI Executive Contribution to it

In the UK State Party Report under Article 14 reference is made to the Northern Ireland Mental Health Review Tribunal and its role in reviewing detention under the Mental Health (Northern Ireland) Order 1986.²⁴⁶ However, there is no discussion of disability (‘mental disorder’) as the basis for detention as contained in that Order.

The NI Executive Contribution to the UK State Party Report commits to compliance with the Disability Discrimination Act 1995 and that any ‘refurbishment of existing [prison] accommodation will include improved disability facilities’.²⁴⁷

Northern Ireland Disability Strategy 2012-2015

In the Disability Strategy, Article 14 is referenced in connection with the Programme for Government Commitment to ‘Tackle crime against older and vulnerable people by more effective and appropriate sentences and other measures (DOJ)’. However,

²⁴⁴ This point is made in the Concluding Observations with respect to Australia, Austria, El Salvador, Paraguay, Hungary, Peru and Tunisia.

²⁴⁵ Concluding Observation on Australia, para. 32 (d). See also El Salvador para. 32.

²⁴⁶ Mental Health (NI) Order 1986, at para 139, p. 42.

²⁴⁷ Northern Ireland Executive (2011) ‘Northern Ireland Executive’s Contribution to the UK Government Report to the United Nations Committee’, p.16.

this is clearly an issue to which Article 14 relates indirectly to ‘security’ of person and not to ‘liberty’. The UN Committee has not considered the meaning of ‘security’ in Article 14.²⁴⁸

Reconsideration of key Northern Ireland policies and programmes

The Mental Health (Northern Ireland) Order 1986 defines ‘mental disorder’ as meaning ‘mental illness, mental handicap and any other disorder or disability of mind’. A law which permits detention on this basis is clearly in breach of the obligations of Article 14.

Since the 2012 research was completed, the policy positions of the Northern Ireland Mental Capacity Bill have been clarified. The policy position is now that deprivation of liberty can only take place on the basis of a person (not just a disabled person) being unable to make a decision for himself or herself in relation to a matter because of an impairment of, or disturbance in the functioning of, the mind or brain. The legal concept of ‘mental disorder’ as it exists in the Mental Health (Northern Ireland) Order 1986 will be removed.²⁴⁹ However, the correct interpretation of Article 12 remains deeply disputed²⁵⁰ and this has implications for compliance with Article 14. It is arguable that deprivation of liberty on the basis of: (1) functional mental impairment with respect to a particular decision at a particular time; and (2) with the law, policies and programmes in connection with this applying to all people over 16 years old (regardless of whether the person is a person with a disability or not) is compliant with the UNCRPD. However, the UN Committee does not appear to distinguish consistently in its jurisprudence between ‘disability’ and ‘impairment’ as they appear in Article 1 of the UNCRPD.²⁵¹

²⁴⁸ Office of the First Minister and Deputy First Minister (2013) ‘The Disability Strategy 2012-2015’, Belfast: OFMDFM, p.43.

²⁴⁹ This concept along with the Order will be retained ‘as an interim measure’ for under 16s. This is clearly not in compliance with article 14 and the UN Committee are likely to return to this issue in the second UK examination to see if this situation has been corrected.

²⁵⁰ See the submissions on the Draft General Comment No. 1 on Equal Recognition before the law; available at: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/DGCArticles12And9.aspx>.

²⁵¹ See the text of the Draft General Comment no. 1 on Equal Recognition before the law; available at: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/DGCArticles12And9.aspx>. Also see para. 25 of the Concluding Observations on China.

Stakeholder engagement

The rights and obligations articulated by Article 14 on liberty and security of person were not raised in the stakeholder consultation events or in the Expert Seminar.

Any significant gaps or shortfalls in Northern Ireland public policy and programmes

Article 14 is essentially about legal obligations rather than obligations with respect to policies and programmes. However, a range of policies and programmes will need to be created and/or amended to implement the Northern Ireland Mental Capacity Bill in full (including with respect to deprivations of liberty) and these will need to ensure that processes for loss of liberty treat disabled people on an equal basis with others.

In 2011 a root and branch review of the prison system in Northern Ireland reported that the recording of disability amongst prisoners was poor. For example, whilst a survey of prisoners at Her Majesty's Prison Maghaberry, Northern Ireland's largest prison holding in and around 1,700 inmates, found that 1 in 4 prisoners considered themselves to be disabled official records indicated that only 18 prisoners had a disability.²⁵²

Article 14 (2) creates an obligation to provide reasonable accommodation for people with disabilities who are deprived of their liberty. There is currently no reference to reasonable accommodation for prisoners with disabilities in the Northern Ireland Prison Rules²⁵³ and it is likely that the UN Committee would expect a formal policy on this issue.

The NI Executive Contribution to the UK State Party Report states:

²⁵² Prison Review Team (October 2011): 'Review of the NI Prison Service: 'Conditions, management and oversight of all prisons', page 38. Available at: <http://www.dojni.gov.uk/index/ni-prison-service/nips-publications/independent-reports-reviews-nips/owers-review-of-the-northern-ireland-prison-service.htm>

²⁵³ The 'Prison Rules' are available at: http://www.dojni.gov.uk/index/ni-prison-service/nips-publications/corporate-documents/prison_young_offender_centre_rules_feb_2010.pdf.

‘Prison accommodation for disabled prisoners is generally of the same standard as general prisoner accommodation. Any refurbishment of existing accommodation will include improved disability facilities’.²⁵⁴

Such a clear recognition of the need for more accessible prison accommodation without a clear policy commitment to proactively provide it is likely to be in breach of Article 14 (2).

7.11 Article 15: Freedom from torture or cruel, inhuman or degrading treatment or punishment

Jurisprudence of the UN Committee on the Rights of Persons with Disabilities

In its jurisprudence relating to Article 15 the UN Committee on the Rights of Persons with Disabilities has emphasised that State Parties must take immediate steps to end such ‘non-consensual’ practices as ‘chemical, mechanical and physical restraint’.²⁵⁵ The UN Committee has also emphasised that ‘medical or scientific experimentation’ should not take place without consent²⁵⁶ and that psychiatric treatment without consent (which is ‘intrusive’) is also a breach of Article 15.²⁵⁷ To date the focus of the comments of the UN Committee on this right have been on the obligation on State Parties to respect it; requirements for protection and fulfilment are as yet unarticulated.

UK State Party Report and NI Executive Contribution to it

The UK State Party Report makes no reference to Northern Ireland in its consideration of Article 15.²⁵⁸ The material relating specifically to GB refers to the relevant mental capacity statutes which contain sections relating to the carrying out

²⁵⁴ Northern Ireland Executive (2011) ‘Northern Ireland Executive’s Contribution to the UK Government Report to the United Nations Committee’, p.16.

²⁵⁵ Concluding Observations on Australia, paras. 35-36 and on Austria at paras. 32-33.

²⁵⁶ See the Concluding Observations on El Salvador para. 34, China para. 28, and Hungary para. 30.

²⁵⁷ See Concluding Observations on Peru para. 30-31, China para. 27-28, El Salvador para. 33-34, and Australia para. 35-36.

²⁵⁸ CRPD/C/GBR/1 ‘Consideration of Reports Submitted by States Parties under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland’, at para. 146-50.

of research on people who lack capacity. It also refers to the Research Ethics Committee system.

The NI Executive Contribution to the UK State Party Report does not make any reference to Article 15.

Northern Ireland Disability Strategy 2012-2015

The Northern Ireland Disability Strategy references Article 15 in relation to the Programme for Government commitment to ‘Tackle crime against older and vulnerable people by more effective and appropriate sentences and other measures (DOJ)’.²⁵⁹ However, it is not clear how the obligations contained in article 15 are considered to relate to measures in connection with community safety and hate crime.

Reconsideration of key Northern Ireland policies and programmes

There have been no significant policy developments in Northern Ireland which relate directly to the general obligations contained in Article 15 insofar as it is about ‘torture, inhuman and degrading treatment’. However, on the specific matter of the requirement for consent for medical or scientific experimentation, the legal policy position in the Northern Ireland Mental Capacity Bill has clarified the policy position in Northern Ireland. The provisions of the NI Mental Capacity Bill match those in the England and Wales Mental Capacity Act 2005. It is also the case that the policy on research ethics in Northern Ireland follows the UK-wide policy of permitting non-consensual experimentation on persons without their consent based on their lack of capacity to consent.²⁶⁰

²⁵⁹ Office of the First Minister and Deputy First Minister (2013) ‘A Strategy to improve the lives of people with disabilities 2012-2015’, Belfast: OFMDFM, p.43.

²⁶⁰ See the website of the Office for Research Ethics Committees NI at: <http://www.hscbusiness.hscni.net/orecni.htm>

Stakeholder engagement

Article 15 was not raised as a concern in the stakeholder events or in the Expert Seminar.

Any significant gaps or shortfalls in Northern Ireland public policy and programmes

In human rights terms, the rights of Article 15 are unambiguously considered to be absolute. The UN Committee on the Rights of Persons with Disabilities is likely to consider the legal and ethical policies which permit ‘medical or scientific experimentation’ without ‘free consent’ to be a significant breach of Article 15. It would follow that any research programmes which proceed on this basis also constitute breaches. It is important to note in connection with this that a great deal of such research is effectively carried out by the State Party through the use of National Health Service (NHS) facilities and the participation of NHS staff and patients.

7.12 Article 16: Freedom from exploitation, violence and abuse

Jurisprudence of the UN Committee on the Rights of Persons with Disabilities

A number of key themes have emerged from the UN Committee’s Concluding Observations to date:

- State Parties should adopt legislation to prevent, investigate and punish exploitation, violence and abuse involving persons with disabilities, with a particular focus on women and children;²⁶¹
- Measures should be taken to prevent the exploitation of children with disabilities for the purpose of begging or the victims of trafficking and establish programmes to promote their integration in society and their right to live in the community;²⁶²

²⁶¹ CRPD/C/AUS/CO/1 Concluding Observations: Australia, at para 38; CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 34; CRPD/C/ARG/CO/1 Concluding Observations: Argentina, at para 30; CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 36; and CRPD/C/HUN/CO/1 Concluding Observations: Hungary, at para 32.

²⁶² CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 36 and CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 42.

- Data and information is needed on violence and abuse against persons with disabilities, paying particular attention to women, children and persons who are institutionalized;²⁶³ and
- Protocols should be established and training in the investigation of cases of violence against persons with disabilities is needed.²⁶⁴

UK State Party Report and NI Executive Contribution to it

The UK State Party Report refers to the NI Executive developing a policy on safeguarding adults at risk of harm and outlines some of the measures envisaged.²⁶⁵

The 'Northern Ireland Executive's Contribution to the UK Government Report' references the same policy development as a measure to prevent abuse, exploitation and neglect of disabled people among others.²⁶⁶ The 'NI Executive Contribution' also cites the 'Tackling violence at home' (October, 2005)²⁶⁷ and 'Tackling sexual violence and abuse' (June 2008)²⁶⁸ strategies which are claimed to 'respond to the needs of all victims/survivors (male, female and children) of domestic and sexual violence and abuse, irrespective of ... disability'.²⁶⁹

Northern Ireland Disability Strategy 2012-2015

The Northern Ireland Disability Strategy refers to Article 16 on Freedom from violence, exploitation and abuse in the context of the Programme for Government

²⁶³ CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 40; CRPD/C/ARG/CO/1 Concluding Observations: Argentina, at para 30; and CRPD/C/HUN/CO/1 Concluding Observations: Hungary, at para 32.

²⁶⁴ CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 35 and CRPD/C/CHN/CO/1 Concluding Observations: China, at para 91.

²⁶⁵ CRPD/C/GBR/1 'Consideration of Reports Submitted by States Parties under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland', at para. 160, p. 48.

²⁶⁶ Northern Ireland Executive (2011) 'Northern Ireland Executive's Contribution to the UK Government Report to the United Nations Committee', pp.16-17.

²⁶⁷ Available at http://www.dhsspsni.gov.uk/tackling_violence_strategy.pdf.

²⁶⁸ Available at http://www.dhsspsni.gov.uk/tackling_sexual_violence_and_abuse_strategy_.pdf.

²⁶⁹ Northern Ireland Executive (2011) 'Northern Ireland Executive's Contribution to the UK Government Report to the United Nations Committee', p.17.

Commitment to ‘reduce the level of serious crime.’²⁷⁰ The Commitment to ‘Deliver a range of measures to tackle poverty and social exclusion through the Delivering Social Change delivery framework (OFMDFM)’ has an addendum which states:

‘The framework will include key actions to develop an integrated policy framework to tackle multi-generational poverty, a new Victims and Survivors Service, a review of Historical Institutional Abuse and actions to ensure compliance with the 16 United [sic] Nations Convention on the Rights of Persons with Disabilities)’.²⁷¹

Reconsideration of key Northern Ireland policies and programmes

Neither of the two Strategies cited in the ‘Northern Ireland Executive’s Contribution to the UK Government Report’ contain explicit measures to address violence against people with disabilities, although the higher incidence of sexual violence against them (people with learning disabilities in particular) is recognised.

A public consultation on ‘Stopping Domestic and Sexual Violence and Abuse Strategy 2013-2020’ ended on 11 April 2014.²⁷² This Strategy is the successor of the two cited in the NI Executive Contribution. The focus is on ‘responsive services for victims and families, and to reduce the risk of reoccurrence of that violence and abuse – regardless of age, gender, sexual orientation, religion, ethnicity, socioeconomic circumstances or disability of the individual(s).’ However, the draft Strategy does not envisage disability specific programmes.

The Northern Ireland Adult Safeguarding Partnership has been established and is the regional lead for safeguarding issues.²⁷³ In addition, the Mental Capacity Bill will increase legal protections for people with disabilities who lack capacity.

The Department of Health Social Services and Public Safety (DHSSPS) and the Department of Justice are developing a policy framework in relation to Safeguarding

²⁷⁰ Office of the First Minister and Deputy First Minister (2013) ‘A Strategy to improve the lives of people with disabilities 2012-2015’, Belfast: OFMDFM, p.42.

²⁷¹ *Ibid*, p.37.

²⁷² The consultation document is available at: <http://www.dhsspsni.gov.uk/dsva-strategy.pdf>.

²⁷³ <http://www.hscboard.hscni.net/NIASP/About%20the%20NIASP/About%20Us.html>.

Vulnerable Adults in Northern Ireland. It is planned to issue this for public consultation in 2014²⁷⁴ and this will clearly be a potentially valuable measure for ensuring the rights of article 16. However, attempts at fulfilling the obligations of article 16 on the basis of ‘vulnerability’ rather than ‘disability’, may prove to be problematic for other UNCPRD rights and obligations such as those contained in articles 5, 8, 14 and 12.

Stakeholder engagement

Article 16 was not raised in the stakeholder events or Expert Seminar and discussion of issues of exploitation, violence and abuse were notably absent.

Any significant gaps or shortfalls in Northern Ireland public policy and programmes

Policies and programmes to deliver on Article 16 will need to have a clear basis in the particular experiences of violence, exploitation and abuse of disabled people. Generic programmes and policies which ‘include’ people with disabilities but which are not designed with them explicitly in mind are unlikely to satisfy the UN Committee as being compliant with Article 16.

The absence of comment on Article 16 issues displayed in the stakeholder input is itself perhaps a sign of a lack of government emphasis on what are difficult issues which many voluntary sector organisations are reluctant to engage.

For the NI Executive to create a ‘Historical Institutional Abuse Inquiry’²⁷⁵ in 2013 which does not cover the experiences of disabled adults in institutions could be seen by the UN Committee as a major failure to respect, protect and fulfil the rights of Article 16. The disparity in treatment of disabled people in institutions is underlined by the existence of statutory powers to require production of evidence.²⁷⁶

²⁷⁴ See http://www.dhsspsni.gov.uk/index/hss/safeguarding_vulnerable_adults.htm.

²⁷⁵ See <http://www.hiainquiry.org/index.htm>.

²⁷⁶ Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013, Section 9, at: <http://www.legislation.gov.uk/nia/2013/2/section/9>.

7.13 Article 17: Protecting the integrity of the person

Jurisprudence of the UN Committee on the Rights of Persons with Disabilities

A number of key themes emerged from the UN Committee's Concluding Observations to date:

- The State party should provide the necessary support to women to give consent for a legal abortion or sterilization;²⁷⁷
- The State party should amend/adopt legislation in accordance with the UNCRPD regarding sterilization or treatments without consent;²⁷⁸ and
- More information is needed to monitor the experiences of people with disabilities in psychiatric hospitals.²⁷⁹

The UK State Party Report and the NI Executive Contribution to it

The Northern Ireland Executive's Contribution to the UK Government Report does not mention Article 17. The UK State Party Report states that disabled people cannot be subject to medical treatments without freely giving informed consent.²⁸⁰ The Report discusses the Mental Capacity Act 2005²⁸¹ as a safeguarding mechanism to protect individuals that lack capacity for decision making; however this legislation does not apply in Northern Ireland²⁸² (see Article 12). It also states that disabled people should retain their fertility and that only in exceptional circumstances can a court (in conjunction with a doctor) decide to sterilize a person who lacks capacity.²⁸³

²⁷⁷ CRPD/C/ARG/CO/1 Concluding Observations: Argentina, at para 32.

²⁷⁸ CRPD/C/ARG/CO/1 Concluding Observations: Argentina, at para 32; CRPD/C/AUS/CO/1 Concluding Observations: Australia, at para 40; CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 38; CRPD/C/ESP/CO/1 Concluding Observations: Spain, at para 38; and CRPD/C/TUN/CO/1 Concluding Observations: Tunisia, at para 29

²⁷⁹ CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 38.

²⁸⁰ CRPD/C/GBR/1, 'Consideration of Reports Submitted by States Parties Under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland', 24 November 2011, at para 163.

²⁸¹ Mental Capacity Act 2005, available at: <http://www.legislation.gov.uk/ukpga/2005/9/contents>.

²⁸² *Ibid*, at para 164.

²⁸³ *Ibid*, at para 165.

Northern Ireland Disability Strategy 2012-2015

The Disability Strategy does not mention Article 17.

Reconsideration of key Northern Ireland policies and programmes

The 2012 Report suggests that Article 17 should be considered with articles 15 and 16 and that no policies or programmes have been identified as specifically addressing Article 17.²⁸⁴ This finding remains valid.

Stakeholder engagement

Article 17 was not explicitly mentioned during the stakeholder engagement events.

Any significant gaps or shortfalls in Northern Ireland public policy and programmes

This article should also be considered with Article 12 as it relates to the development of capacity legislation for Northern Ireland.

7.14 Article 18: Liberty of movement and nationality

Jurisprudence of the UN Committee on the Rights of Persons with Disabilities

The key theme emerging from the UN Committee's Concluding Observations to date is that children with disabilities should be included in a state registry at birth which is simple, quick, and free of charge.²⁸⁵

The UK State Party Report and the NI Executive Contribution to it

The Northern Ireland Executive's Contribution to the UK Government Report does not mention Article 18. The UK State Party Report states that disabled people have

²⁸⁴ Harper, C, S McClenahan, B Byrne & H Russell (2012) 'Disability Programmes and Policies: How Does Northern Ireland Measure Up?', Belfast: Equality Commission for Northern Ireland, p.149.

²⁸⁵ CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 40 and CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 46.

the same rights to nationality as non-disabled people²⁸⁶ and that disabled children must be registered at birth.²⁸⁷ It also discusses ongoing consultations related to the reservations filed regarding immigration and whether these reservations were needed.²⁸⁸

Northern Ireland Disability Strategy 2012-2015

The Disability Strategy does not specifically address Article 18.

Reconsideration of key Northern Ireland policies and programmes

The 2012 Report stated that the formal reservations to the UNCRPD placed on Article 18 by the UK Government were a reserved matter and therefore not within the scope of the research. It also found no major concerns with Article 18 in NI policies and programmes.²⁸⁹ This finding remains valid.

Stakeholder engagement

There were no specific references to Article 18 during the stakeholder engagement events.

Any significant gaps or shortfalls in Northern Ireland public policy and programmes

The reservations pertaining to Article 18 are not matters devolved to the Northern Ireland Assembly (the responsibility of Westminster) and therefore outside of the scope of this research.

²⁸⁶ CRPD/C/GBR/1, 'Consideration of Reports Submitted by States Parties Under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland', 24 November 2011, at para 169-170.

²⁸⁷ *Ibid*, at para 172.

²⁸⁸ *Ibid*, at para 171.

²⁸⁹ Harper, C, S McClenahan, B Byrne & H Russell (2012) 'Disability Programmes and Policies: How Does Northern Ireland Measure Up?', Belfast: Equality Commission for Northern Ireland, p.152.

7.15 Article 19: Living independently and being included in the community

Jurisprudence of the UN Committee on the Rights of Persons with Disabilities

A total of two key themes have emerged from the UN Committee's Concluding Observations to date which articulate what is needed for the fulfilment of this right:

- State parties need to develop and implement comprehensive programmes that enable disabled people to access a wide range of in-home, residential, community-based and other services to freely choose where, with whom, and how to live;²⁹⁰
- Residential institutions should be closed and resources allocated to enable persons with disabilities to live in the community.²⁹¹

The UK State Party Report and the NI Executive Contribution to it

The Northern Ireland Executive's Contribution to the UK Government Report identified the Supporting People Strategy 2010-2015,²⁹² the Bamford Action Plan 2012-2015,²⁹³ and the Physical and Sensory Disability Strategy 2012-2015²⁹⁴ as addressing Article 19.²⁹⁵ The UK State Party Report focuses on policies and

²⁹⁰ CRPD/C/ARG/CO/1 Concluding Observations: Argentina, at para 34; CRPD/C/AUS/CO/1 Concluding Observations: Australia, at para 42; CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 38-39; CRPD/C/CHN/CO/1 Concluding Observations: China, at para 32; CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 42; CRPD/C/HUN/CO/1 Concluding Observations: Hungary, at para 34; CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 49-50; CRPD/C/PER/CO/1 Concluding Observations: Peru, at para 33; and CRPD/C/ESP/CO/1 Concluding Observations: Spain, at para 40-42.

²⁹¹ CRPD/C/AUS/CO/1 Concluding Observations: Australia, at para 42; CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 37; CRPD/C/CHN/CO/1 Concluding Observations: China, at para 32; CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 42; and CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 48.

²⁹² Northern Ireland Housing Executive (2012) 'Housing Related Support Strategy 2012-2015', available at http://www.nihe.gov.uk/housing_related_support_strategy.pdf.

²⁹³ Department of Health, Social Services & Public Safety (2012) 'Delivering the Bamford Vision: The Response of the Northern Ireland Executive to the Bamford Review of Mental Health and Learning Disability Action Plan 2012-2015', Belfast: DHSSPS, available at <http://www.dhsspsni.gov.uk/2012-2015-bamford-action-plan.pdf>.

²⁹⁴ Department of Health, Social Services & Public Safety (2012) 'Physical and Sensory Disability Strategy and Action Plan 2012-2015', Belfast: DHSSPS, available at http://www.dhsspsni.gov.uk/disability_strategy_and_action_plan_-_2012-2015.pdf.

²⁹⁵ Northern Ireland Executive (2011) 'Northern Ireland Executive's Contribution to the UK Government Report to the United Nations Committee', pp.17-19, available at

programmes that primarily apply in England²⁹⁶ but does mention the Supporting People Strategy 2010-2015 in Northern Ireland.²⁹⁷

Northern Ireland Disability Strategy 2012-2015

The Disability Strategy highlights the Supporting People Programme²⁹⁸ which funds a range of housing support services benefiting approximately 15,000 service users but recognises that it is not an independent living programme which would require more joint working by Government departments.²⁹⁹ It dedicates strategic priority 8 to increasing the level of choice, control and freedom that people with disabilities have in their daily lives. It is not clear how this will be achieved. The Disability Strategy links the following Programme for Government (PfG) commitments to Article 19:

- Deliver 8,000 social and affordable homes;³⁰⁰
- Publish and implement a Childcare strategy;³⁰¹
- Delay domestic water charges;³⁰²
- Establish an advisory group to assist Ministers in alleviating hardship including any implications of the Welfare Reform;³⁰³
- Introduce programmes to address chronic condition management;³⁰⁴ and
- Invest over £500m to promote sustainable modes of travel.³⁰⁵

http://www.ofmdfmi.gov.uk/executives_contribution_to_the_uk_government_report_to_the_united_nations_committee_-_amended.pdf (Last visited 17 January 2014).

²⁹⁶ CRPD/C/GBR/1, 'Consideration of Reports Submitted by States Parties Under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland', 24 November 2011, at para 174-184.

²⁹⁷ *Ibid*, at para 185.

²⁹⁸ More information available at http://www.nihe.gov.uk/index/advice/supporting_people.htm

²⁹⁹ Office of the First Minister and Deputy First Minister (2013) 'The Disability Strategy 2012-2015', Belfast: OFMDFM, p.18.

³⁰⁰ *Ibid*, p.35.

³⁰¹ *Ibid*, p.37.

³⁰² *Ibid*, p.39.

³⁰³ *Ibid*, p.39.

³⁰⁴ *Ibid*, p.40.

³⁰⁵ *Ibid*, p.49.

Reconsideration of key Northern Ireland policies and programmes

The 2012 Report suggested that Article 19 should be considered with articles 12, 20, 21, 29, and 30;³⁰⁶ however in light of some recent developments (particularly Transforming Your Care), articles 9, 23, 25, and 26 are also relevant. The way in which article 19 engage across so many other rights in the UNCRPD reflects its primary nature as a right which must essentially be fulfilled and not only respected and protected. The Physical and Sensory Disability Strategy highlights the obligations and importance of joint working between health and social care and housing agencies³⁰⁷ and the Bamford Action Plan 2012-2015 has committed £6.4 million to the resettlement of approximately 200 long-stay patients in learning disability hospitals that do not require treatment by 2015.³⁰⁸ Targets previously set to complete resettlement by 2002 and 2013 were missed due to a lack of resources.³⁰⁹

Transforming Your Care includes in its list of key desired outcomes: caring for people at home where appropriate and investing in new technology to enable people to live independently; giving people more choice and control over the types of services they can access; and partnership working between health and social care staff to prevent unnecessary hospitalization.³¹⁰

³⁰⁶ Harper, C, S McClenahan, B Byrne & H Russell (2012) 'Disability Programmes and Policies: How Does Northern Ireland Measure Up?', Belfast: Equality Commission for Northern Ireland, pp.157-158.

³⁰⁷ Department of Health, Social Services & Public Safety (2012) 'Physical and Sensory Disability Strategy and Action Plan 201-2015', Belfast: DHSSPS, pp.66-67.

³⁰⁸ Department of Health, Social Services & Public Safety (2012) 'Delivering the Bamford Vision: The Response of the Northern Ireland Executive to the Bamford Review of Mental Health and Learning Disability Action Plan 2012-2015', Belfast: DHSSPS, p.25.

³⁰⁹ IMNI Joint Response Paper 'Evidence to the Joint Committee on Human Rights: Inquiry into the implementation of the right of disabled people to independent living as guaranteed by Article 19, UN Convention on the Rights of Persons with Disabilities', pp.3-4, available at www.equalityni.org/archive/.../IMNI_Joint_Response_JCHR270411.doc (Last visited 23 February 2014) and Department of Health, Social Services & Public Safety (2012) 'Delivering the Bamford Vision: The Response of the Northern Ireland Executive to the Bamford Review of Mental Health and Learning Disability Action Plan 2012-2015', Belfast: DHSSPS, p.56.

³¹⁰ Health and Social Care Board (2013) 'Transforming Your Care: A review of health and social care in Northern Ireland', Belfast: HSCB, p.12. See also the 'Evidence to the Joint Committee on Human Rights'³¹⁰, the 'Housing Related Support Strategy 2012-2015'³¹⁰, and 'Inter-departmental Review of Housing Adaptations Services'³¹⁰ for additional information pertaining to Article 19.

Stakeholder engagement

Independent Living was a major theme that was discussed at all stakeholder engagement events. Some comments included:

- 'Silo working and questions about payment responsibilities are problems across departments (particularly DHSSPS and Department for Social Development (DSD))';
- 'Living in the community requires services in the community and so far this has not happened';
- 'The time allowed for support services in the home is not adequate to facilitate independent living';³¹¹
- 'Housing Executive/Associations will not take responsibility of people with disabilities and they are often forced to stay in the family home';
- 'I have just moved and it is much better. I live with mother and we now have a walk-in shower which makes things easier for us. It took a long time to get this house (it is through a housing association). I know that this will be my house forever, even when mother doesn't live there anymore and I am learning to live independently (with support)';
- 'I live in supported independent living and I like it. I have one housemate but I didn't pick who I would live with'; and
- 'I would like to live with a friend or boyfriend when I get older. I need support and I would like to live near but not with my parents'.

Similar issues were raised by those who attended the Expert Seminar, particularly in relation to Transforming Your Care and the decentralisation and engagement with the community and their families.

Any significant gaps or shortfalls in Northern Ireland public policy and programmes

There are problems with a lack of joint working, particularly between DHSSPS and DSD, which limits the potential for many people with disabilities to live independently

³¹¹ See also Leonard Cheshire (2013) 'Ending 15 Minute Care', available at <file:///C:/Users/Irvine/Downloads/15%20min%20care%20report%20final.pdf> (Last visited 23 February 2014). The report is based in England but raises many of the same points that were discussed with stakeholders.

in the community. Many people with disabilities in Northern Ireland lack the choice, control, and freedom to determine where and with whom they live. In addition to the lack of choice with regards to living in the community, the ongoing delays of the resettlement from long-stay hospitals is also a concern.³¹²

Transportation was also raised consistently through the consultations as one of the major barriers limiting disabled people's ability to live independently and be included in the community. The problems with transportation were not limited to any one type of transport and problems were raised with the unaccommodating hours of door-to-door transport, the lack of physical access for public transport, prohibitive costs of private transport (particularly taxis and mini buses), and the lack of understanding and awareness of disability by many people who work for transport companies.³¹³

Individual payments are another limitation to living independently and the Evaluation of the 2009-2011 Bamford Action Plan highlighted the 'considerable variation in availability of Direct Payments across Trust areas and the need for more progress towards self-directed support and personal budgets'.³¹⁴

7.16 Article 20: Personal mobility

Jurisprudence of the UN Committee on the Rights of Persons with Disabilities

A total of two key themes have emerged from the UN Committee's Concluding Observations to date:

- The State party should ensure access to assistive devices (including mobility/technical aids, live assistance, and support technologies) to all disabled people;³¹⁵ and
- The State party should encourage research and development of low-cost mobility devices.³¹⁶

³¹² Department of Health, Social Services & Public Safety (2012) 'Delivering the Bamford Vision: The Response of the Northern Ireland Executive to the Bamford Review of Mental Health and Learning Disability Action Plan 2012-2015', Belfast: DHSSPS, p.25.

³¹³ Stakeholder events combined notes in Interim Report.

³¹⁴ Department of Health, Social Services & Public Safety (2012) 'Evaluation of the 2009-2011 Bamford Action Plan', Belfast: DHSSPS, p.31.

³¹⁵ CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 44; CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 52.

The UK State Party Report and the NI Executive Contribution to it

The Northern Ireland Executive's Contribution to the UK Government Report referenced the Accessible Transport Strategy³¹⁷ as a means to improving personal mobility of people with disabilities by increasing the number of accessible vehicles and improving the use of audio/visual technology.³¹⁸ It also mentioned the Regional Wheelchair Services Implementation Group which is working to reform the Northern Ireland Wheelchair Service and improve service provision³¹⁹ The NI Executive Contribution further states that wheelchair users are actively involved in service improvement through this Group. This is included in the final UK State party report.

Northern Ireland Disability Strategy 2012-2015

The Disability Strategy links Article 20 to strategic priority 6 which aims to eliminate barriers to accessing transport and ensure personal mobility for disabled people.³²⁰

Numerous actions emanating from Programme for Government commitments were identified as addressing Article 20 including:

- Reduce fuel poverty;³²¹
- Establish an advisory group to assist Ministers in alleviating hardship including any implications of the Welfare Reform;³²²
- Introduce programmes to address chronic condition management and obesity;³²³

³¹⁶ CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 52.

³¹⁷ Department for Regional Development (2005) 'Accessible Transport Strategy', Belfast: DRD, available at http://www.drdni.gov.uk/accessible_transport_strategy_for_northern_ireland_2015-10.pdf.

³¹⁸ Northern Ireland Executive (2011) 'Northern Ireland Executive's Contribution to the UK Government Report to the United Nations Committee', p.19, available at http://www.ofmdfmi.gov.uk/executives_contribution_to_the_uk_government_report_to_the_united_nations_committee_-_amended.pdf (Last visited 17 January 2014).

³¹⁹ *Ibid*, p.20.

³²⁰ Office of the First Minister and Deputy First Minister (2013) 'The Disability Strategy 2012-2015', Belfast: OFMDFM, p.17.

³²¹ *Ibid*, p.36.

³²² *Ibid*, p.39.

- Tackle rural poverty and social and economic isolation in the next three years;³²⁴
- Invest in sustainable modes of travel and implement the Accessible Transport Strategy;³²⁵
- Develop sports stadiums as agreed with the IFA, GAA and Ulster Rugby;³²⁶ and
- Ensure all children have the opportunity to participate in shared education programmes by 2015 and substantially increase the number of schools sharing facilities by 2015.³²⁷

However, the relationship between these commitments and the realisation of Article 20 is not made explicit.

Reconsideration of key Northern Ireland policies and programmes

The 2012 Report stated that Article 20 included accessible transport, assistance (human and devices), and personal choices in life (e.g. education, transport, and family life).³²⁸ The Physical and Sensory Disability Strategy stated that it is important that assistive devices are ‘fit for purpose’ and that any repairs or replacements required should be provided in a timely manner.³²⁹ Article 20 should be considered with articles 9, 25, and 26.

³²³ *Ibid*, p.40-41.

³²⁴ *Ibid*, p.41.

³²⁵ *Ibid*, p.49.

³²⁶ *Ibid*, p.50.

³²⁷ *Ibid*, p.51.

³²⁸ Harper, C, S McClenahan, B Byrne & H Russell (2012) ‘Disability Programmes and Policies: How Does Northern Ireland Measure Up?’, Belfast: Equality Commission for Northern Ireland, pp.164-165.

³²⁹ Department of Health, Social Services & Public Safety (2012) ‘Physical and Sensory Disability Strategy and Action Plan 201-2015’, Belfast: DHSSPS, p.56, available at http://www.dhsspsni.gov.uk/disability_strategy_and_action_plan_-_2012-2015.pdf.

Stakeholder engagement

Problems with assistive devices and/or adaptations were raised a number of times during the stakeholder engagement events. One participant stated that ‘not providing proper equipment leads to exclusion and isolation’ and another stated that ‘DHSSPS doesn’t see the importance of assistive devices or how they impact on a person’s life’. A number of examples were given pertaining to this issue including problems with hearing aids and wheelchairs in particular and a lack of support from the relevant health authorities to get them fixed in a timely manner. In addition to assistive devices, transportation was also raised frequently as one of the largest barriers to people with disabilities participating fully in society. Stakeholders spoke of the limitations of door-to-door transport’s availability, higher taxi fares for wheelchair users, and the inaccessibility of public buses and trains (buses still do not have audio/visual and can only accommodate one wheelchair) as impacting on personal mobility.

Any significant gaps or shortfalls in Northern Ireland public policy and programmes

There are gaps around the maintenance of assistive devices, with many stakeholders giving personal examples of how the failure to repair or replace the device in a timely manner had affected their lives (sometimes for months at a time). Inaccessible transport and prohibitive taxi fares also remain a serious concern for many people with disabilities.³³⁰ Substantive research into this area remains limited.³³¹

³³⁰ See also the discussion on Article 9 above.

³³¹ But see discussion in Article 9 above and Adapt NI and BM Kent (2013) ‘A baseline audit of accessibility to services in Northern Ireland for people with a disability, available at <http://www.equalityni.org/Research-investigations>

7.17 Article 21: Freedom of expression and opinion, and access to information

Jurisprudence of the UN Committee on the Rights of Persons with Disabilities

A number of key themes have emerged from the UN Committee's Concluding Observations to date:

- State parties should recognise sign language as a national language;³³²
- Adequate funding should be allocated to develop, promote, and use accessible formats of communication;³³³ and
- All public information should be made available in accessible forms and formats.³³⁴

The UK State Party Report and the NI Executive Contribution to it

The Northern Ireland Executive's Contribution to the UK Government Report does not mention Article 21. Nor does the UK State Party Report refer to Northern Ireland specifically under Article 21. For example, the UK State Party Report highlights that the Equality Act 2010 includes specific provisions for providing information in accessible formats but this is not applicable in Northern Ireland.³³⁵ It is noted that all public sector websites throughout the UK are required to meet a certain standard of accessibility³³⁶ and that the Access to Work programme can support the employer or employee by providing accessible equipment or software.³³⁷ The UK State Party Report also states that the Communications Act (2003) set minimum targets for

³³² CRPD/C/AUS/CO/1 Concluding Observations: Australia, at para 44; CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 46; and CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 54

³³³ CRPD/C/AUS/CO/1 Concluding Observations: Australia, at para 44; CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 46; and CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 54.

³³⁴ CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 54.

³³⁵ CRPD/C/GBR/1, 'Consideration of Reports Submitted by States Parties Under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland', 24 November 2011, at para 202.

³³⁶ *Ibid*, at para 205.

³³⁷ *Ibid*, at para 206.

subtitling, signing and audio description on television³³⁸ and is applicable across the UK. British and Irish Sign Languages (BSL and ISL, respectively) were recognised in Northern Ireland by the Northern Ireland Office in March 2004; however this is not referred to in the UK report. Moreover, while developments in accessing sign language in Scotland and Wales are referred to, again Northern Ireland is not mentioned.

Northern Ireland Disability Strategy 2012-2015

The Disability Strategy's strategic priority 7 aims to increase the level of accessible/inclusive communications.³³⁹ This is linked to the Programme for Government commitment to 'improve online access to government services' under which it is stated that Department of Finance and Personnel (DFP) will produce a plan with specific actions to promote digital inclusion for people with disabilities based on the NIDirect Assisted Digital Strategy which is currently being drafted'.³⁴⁰ It is not clear whether this has been produced as there is currently no mention of it on the DFP website.

Reconsideration of key Northern Ireland policies and programmes

The 2012 Report recommended that articles 21, 9, 24, 25, and 29 be considered together.³⁴¹

The main developments since the 2012 Report are the development of the Autism Strategy, which dedicates a strategic priority to increasing the level of accessible/inclusive communications,³⁴² and the Physical and Sensory Disability

³³⁸ *Ibid*, at para 210.

³³⁹ Office of the First Minister and Deputy First Minister (2013) 'The Disability Strategy 2012-2015', Belfast: OFMDFM, p.17.

³⁴⁰ *Ibid*, p.53.

³⁴¹ Harper, C, S McClenahan, B Byrne & H Russell (2012) 'Disability Programmes and Policies: How Does Northern Ireland Measure Up?', Belfast: Equality Commission for Northern Ireland, p.173.

³⁴² Department of Health, Social Services & Public Safety (2013) 'The Autism Strategy (2013-2020) and Action Plan (2013-2016)', Belfast: DHSSPS, p.91.

Strategy³⁴³ and the Bamford Action Plan 2012-2015³⁴⁴ which both recommend improving access to advice and information. The Bamford Action Plan also calls for staff training and development of easy read information.³⁴⁵

Departmental Equality Schemes highlight the commitment by departments to ensure that their information is made accessible in different formats and how this will be monitored.³⁴⁶

Stakeholder engagement

Some of the comments included:

- There is a lack of information available in accessible formats particularly related to health;
- 'I need support to understand what courses are available and what their requirements are'; and
- More information is needed to understand the transition process and ensure that the individual is receiving a personalised plan.

Any significant gaps or shortfalls in Northern Ireland public policy and programmes

There remains a shortage of qualified British and Irish Sign Language interpreters and more investment needs to be made in order to meet this need. There is also a need to ensure that important information regarding making life decisions (such as

³⁴³ Department of Health, Social Services & Public Safety (2012) 'Physical and Sensory Disability Strategy and Action Plan 2012-2015', Belfast: DHSSPS, p.86.

³⁴⁴ Department of Health, Social Services & Public Safety (2012) 'Delivering the Bamford Vision: The Response of the Northern Ireland Executive to the Bamford Review of Mental Health and Learning Disability Action Plan 2012-2015', Belfast: DHSSPS, p.53.

³⁴⁵ *Ibid*, p.56.

³⁴⁶ Department for Employment and Learning Equality Scheme 2011, pp.25-26; Department of Culture, Arts & Leisure Equality Scheme 2011, pp.36-38; Department of Agriculture and Rural Development Equality Scheme 2011, pp.37-39; Department of Education Equality Scheme 2013, pp.25-27; Department of Enterprise, Trade & Investment Equality Scheme 2012, p.28; Department of Health, Social Services & Public Safety Equality Scheme 2012, pp.37-39; Department of the Environment Equality Scheme 2012, pp.32-33; Department of Justice Equality Scheme 2012, pp.29-30; Department for Regional Development Equality Scheme 2011, pp.34-35; Department for Social Development Equality Scheme 2013, p.24; Department of Finance & Personnel Equality Scheme 2011, pp.28-29; and The Office of the First Minister and Deputy First Minister Equality Scheme 2011, pp.42-43.

health, education/training, housing, etc.) is available in accessible/inclusive forms. All policies and programmes which are aimed at improving digital communications should ensure inclusivity of access by people with disabilities.

7.18 Article 22: Respect for privacy

Jurisprudence of the UN Committee on the Rights of Persons with Disabilities

The UN Committee on the Rights of Persons with Disabilities has not yet made recommendations with respect to Article 22 in its Concluding Observations, nor has it raised questions with respect to this article in a List of Issues.

UK State Party Report and NI Executive Contribution to it

The UK State Party Report does not contain a reference to Northern Ireland in its treatment of Article 22.³⁴⁷ The Northern Ireland Executive's Contribution to the UK Government Report makes no mention of Article 22.

Northern Ireland Disability Strategy 2012-2015

The Northern Ireland Disability Strategy does not refer to Article 22 on Respect for privacy.

Reconsideration of Key Northern Ireland Policies and Programmes

Given that the UN Committee on the Rights of Persons with Disabilities has not articulated views on the requirements of Article 22, it is difficult to know what the UNCRPD is likely to require beyond what is required in general human rights law relating to privacy (such as Article 8 of the European Convention on Human

³⁴⁷ CRPD/C/GBR/1 'Consideration of Reports Submitted by States Parties under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland', para. 212-15, p.64.

Rights³⁴⁸ and Article 17 of the International Covenant on Civil and Political Rights).³⁴⁹ It is worth noting that through the Human Rights Act 1998 such provisions are structurally imbedded within UK Law.³⁵⁰

Stakeholder engagement

Article 22 on respect for privacy was not raised in the stakeholder events.

Any significant gaps or shortfalls in Northern Ireland public policy and programmes

One potential shortfall with respect to Article 22 is the introduction of the Northern Ireland Electronic Care Record (NIECR) which will involve creating a central computer-based record for significant amounts of health and social care information about individuals.³⁵¹ It is not clear that information will be provided to disabled people in accessible formats which means any use of an 'opt out' approach will not be effective in protecting the privacy rights of disabled people. It is likely that the UN Committee would view Article 22 and Article 25 together as requiring specific policy and associated programmes to ensure that disabled people are fully informed of changes to the management of their health and social care information.

7.19 Article 23: Respect for home and the family

Jurisprudence of the UN Committee on the Rights of Persons with Disabilities

A number of key themes have emerged from the UN Committee's Concluding Observations to date:

³⁴⁸ European Convention on Human Rights 2010, p.10, available at http://www.echr.coe.int/Documents/Convention_ENG.pdf.

³⁴⁹ International Covenant on Civil and Political Rights 1976, available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

³⁵⁰ Human Rights Act 1998, <http://www.legislation.gov.uk/ukpga/1998/42/contents>

³⁵¹ For a brief overview of the NIECR, see: <http://www.nidirect.gov.uk/northern-ireland-electronic-care-record-niecr>. See also 'The NI Electronic Care Record - Confidentiality and Consent Considerations: An advisory note prepared by Privacy Advisory Committee (N. Ireland)' (February, 2013), available at: http://www.privacyadvisorycommittee.hscni.net/NIECR_Confidentiality%20&%20Consent_PAC%20Advisory%20Paper_Feb2013.pdf

- The State party should provide support services that enable families that include at least one person with a disability to live together³⁵² and adopt measures to encourage foster families where this is not possible;³⁵³
- Laws and policies need to be revised to prohibit forced sterilization and abortion on women with disabilities;³⁵⁴
- Appropriate measures are needed to enable people with disabilities to marry and have a family.³⁵⁵

The UK State Party Report and the NI Executive Contribution to it

The Northern Ireland Executive's Contribution to the UK Government Report did not mention Article 23. The UK State Party Report states that disabled people in the UK have the same rights to marriage or civil partnership,³⁵⁶ family planning services,³⁵⁷ fertility treatment,³⁵⁸ foster or adoption of a child³⁵⁹ as non-disabled people. Apart from a reference to the DDA 1995 (as amended) in Northern Ireland in protecting disabled people from unlawful discrimination in the provision of family planning services, Northern Ireland is not specifically referred to in this section of the UK state party report.

Northern Ireland Disability Strategy 2012-2015

The Disability Strategy dedicates strategic priority 10 to ensuring parents and carers with a disability are able to access support services and access their right to a family

³⁵² CRPD/C/ARG/CO/1 Concluding Observations: Argentina, at para 36; CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 34; CRPD/C/HUN/CO/1 Concluding Observations: Hungary, at para 37; and CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 56.

³⁵³ CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 56.

³⁵⁴ CRPD/C/CHN/CO/1 Concluding Observations: China, at para 34; CRPD/C/HUN/CO/1 Concluding Observations: Hungary, at para 38; and CRPD/C/PER/CO/1 Concluding Observations: Peru, at para 35.

³⁵⁵ CRPD/C/HUN/CO/1 Concluding Observations: Hungary, at para 37.

³⁵⁶ CRPD/C/GBR/1, 'Consideration of Reports Submitted by States Parties Under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland', 24 November 2011, at para 217.

³⁵⁷ *Ibid*, at para 218.

³⁵⁸ *Ibid*, at para 220.

³⁵⁹ *Ibid*, at para 221.

life³⁶⁰ and the following Programme for Government commitments are identified in the Disability Strategy as being relevant to Article 23:

- Increase the overall proportion of young people who achieve at least 5 GCSE's at A* - C;³⁶¹
- Publish and implement a Childcare Strategy;³⁶²
- Ensure that at least one year of pre-school education is available to every family that wants it;³⁶³
- Introduce a package of measures aimed at improving Safeguarding Outcomes for Children and Vulnerable Adults;³⁶⁴ and
- Ensure all children have the opportunity to participate in shared education programmes by 2015 and substantially increase the number of schools sharing facilities by 2015.³⁶⁵

The Disability Strategy does not make clear how these commitments will relate to the realisation of Article 23 or how they will be measured and monitored.

Reconsideration of Key Northern Ireland Policies and Programmes

The 2012 Report recommended considering Article 23 in conjunction with articles 6 and 7 and identifies Understanding the Needs of Children in Northern Ireland guidance, the Our Children and Young People – Our Pledge Action Plan 2008-2016,³⁶⁶ and the Carers and Direct Payments Act (NI) 2002³⁶⁷ as the key policy documents. It also acknowledges that there is no specific guidance in relation to

³⁶⁰ Office of the First Minister and Deputy First Minister (2013) 'The Disability Strategy 2012-2015', Belfast: OFMDFM, p.20.

³⁶¹ *Ibid*, p.34.

³⁶² *Ibid*, p.37.

³⁶³ *Ibid*, p.40.

³⁶⁴ *Ibid*, p.50.

³⁶⁵ *Ibid*, p.51.

³⁶⁶ Office of the First Minister and Deputy First Minister (2008) 'Our Children and Young People – Our Pledge Action Plan 2008-2016', available at <http://www.ofmdfmni.gov.uk/index/equality-and-strategy/equality-human-rights-social-change/children-young-people/working-together-achieving-more/northern-irelands-priorities-and-plans-2.htm>.

³⁶⁷ Carers and Direct Payments Act (NI) 2002, available at <http://www.legislation.gov.uk/nia/2002/6/contents>.

parents with disabilities, the rights of persons with disabilities to marry, or the right to retain fertility.³⁶⁸

The Physical and Sensory Disability Strategy discussed the need for further developments of short break care to be more ‘family-friendly’ and meet the individual needs of the person with a disability³⁶⁹ and recommended annual reviews to ensure that recommendations from the HSCB Respite Review Group are implemented.³⁷⁰

The Bamford Action Plan 2012-2015 has a section entitled ‘Supporting Carers’ which establishes targets to enhance the arrangements to meet demand for respite and short breaks, to provide support to all carers to continue their caring role, and to carry out a scoping exercise to ascertain the future caring requirements for people with a learning disability living with elderly carers³⁷¹ (also see Sections 7.17 and 7.28 of the present report).

Stakeholder engagement

Short break/respite opportunities were a primary concern in the consultation with young people with disabilities and participants talked about the differences in quality of short break provision (particularly around age-appropriate activities and the lack of choice). A concern about the lack of support available for families as carers age was also mentioned at the stakeholder event aimed at representatives from disability organisations.

Any Significant Gaps or Shortfalls in Northern Ireland Public Policy and Programmes

A lack of support services for carers is a serious concern for many families. The Evaluation of the 2009-2011 Bamford Action Plan recognised that ‘in most cases Trusts were working hard to provide a comprehensive service for carers’ but also

³⁶⁸ Harper, C, S McClenahan, B Byrne & H Russell (2012) ‘Disability Programmes and Policies: How Does Northern Ireland Measure Up?’, Belfast: Equality Commission for Northern Ireland, pp.182-184.

³⁶⁹ Department of Health, Social Services & Public Safety (2012) ‘Physical and Sensory Disability Strategy and Action Plan 201-2015’, Belfast: DHSSPS, p.61.

³⁷⁰ *Ibid*, p.89.

³⁷¹ Department of Health, Social Services & Public Safety (2012) ‘Delivering the Bamford Vision: The Response of the Northern Ireland Executive to the Bamford Review of Mental Health and Learning Disability Action Plan 2012-2015’, Belfast: DHSSPS, pp.20-21.

argued that more could be done in relation to the promotion of Direct Payments, engagement with General Practitioners (GPs) to ensure that the needs of carers are met, and involvement of carers in service planning.³⁷² The Evaluation also noted that research by the Bamford Monitoring Group found that people were aware of the restrictions of respite allocation due to high demand and a lack of resources.³⁷³ Carers indicated that respite services are essential and would value more respite and short break provision.³⁷⁴

7.20 Article 24: Education

Jurisprudence of the UN Committee on the Rights of Persons with Disabilities

A number of key themes emerged from the UN Committee's Concluding Observations to date:

- The need to develop a comprehensive State education policy that guarantees the right to inclusive education;³⁷⁵
- The duty to provide reasonable accommodation is immediately applicable and not subject to progressive realization;³⁷⁶
- The allocation of sufficient financial and human resources to implement the right to inclusive education;³⁷⁷
- Assurance that decisions on placing children in segregated settings can be appealed swiftly and effectively;³⁷⁸

³⁷² Department of Health, Social Services & Public Safety (2012) 'Evaluation of the 2009-2011 Bamford Action Plan', Belfast: DHSSPS, p.29.

³⁷³ *Ibid*, p.30.

³⁷⁴ *Ibid*, p.30.

³⁷⁵ CRPD/C/CHN/CO/1 Concluding Observations: Hong Kong, at para 23; CRPD/C/ARG/CO/1 Concluding Observations: Argentina, at para 37; CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 40; and CRPD/C/AUS/CO/1 Concluding Observations: Australia, at para 45.

³⁷⁶ CRPD/C/ESP/CO/1 Concluding Observations: Spain, at para 43. See also CRPD/C/AUS/CO/1 Concluding Observations: Australia, at para 45; and CRPD/C/HUN/CO/1 Concluding Observations: Hungary, at para 39.

³⁷⁷ CRPD/C/ESP/CO/1 Concluding Observations: Spain, at para 43 and CRPD/C/HUN/CO/1 Concluding Observations: Hungary, at para 41.

³⁷⁸ CRPD/C/ESP/CO/1 Concluding Observations: Spain, at para 43.

- The provision of the required support for students with disabilities within the general education system;³⁷⁹
- To conduct research into the effectiveness of current education inclusion policies and their implementation;³⁸⁰
- Target setting to increase participation and completion rates by students with disabilities in all levels of education and training, including university and other forms of tertiary education;^{381 382}
- The assurance that persons with disabilities, including children with disabilities and their representative organizations, are involved in the day-to-day implementation of the inclusive education models;³⁸³
- Training of teachers and all other educational staff to enable them to work in inclusive educational settings;³⁸⁴ and
- The provision of quality teacher training to teachers with disabilities and teachers with sign language skills.

The UK State Party Report and the NI Executive Contribution to it

The UK State party report notes that disabled people in the UK have the right to education on an equal basis with non-disabled people. It also expresses a commitment (via its 'interpretive declaration' on Article 24) to enabling parents to continue to have access to places for their children at mainstream and special

³⁷⁹ CRPD/C/HUN/CO/1 Concluding Observations: Hungary, at para 41.

³⁸⁰ CRPD/C/AUS/CO/1 Concluding Observations: Australia, at para 46.

³⁸¹ CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 40. See also, CRPD/C/CHN/CO/1 Concluding Observations: Hong Kong, at para 23; CRPD/C/AUS/CO/1 Concluding Observations: Australia, at para 46. Similar concerns have been expressed in Northern Ireland and this has been the subject of an Assembly Question - *AQW 21804/11-15*, 15 April 2013. See also *AQW 24812/11-15*, 28 March 2013.

³⁸² For further discussion of the right to education under the CRPD, see Byrne, B (2013) 'Hidden contradictions and conditionality: conceptualisations of inclusive education in international human rights law', *Disability & Society*, 28:2, 232-244; Arnardóttir, OM (2011) 'The Right to Inclusive Education for Children with Disabilities – Innovations in the CRPD'; Nijhoff, M (2011) 'Making Peoples Heard: Essays on Human Rights in Honour of Gudmundur Alfredsson', pp.197-227, available at SSRN: <http://ssrn.com/abstract=2333525>; Ebersold, S, M Schmitt, and M Priestley (2011) 'Inclusive education for young disabled people in Europe: Trends, Issues and Challenges' ANED, VT/2007/005.

³⁸³ CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 41.

³⁸⁴ CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 41.

schools.³⁸⁵ The report reaffirms the UK's reservation to Article 24.³⁸⁶ The UK report does not make any reference to the Special Educational Needs and Inclusion Review which was first issued for consultation in 2009. Nor was this referred to in the Northern Ireland Executive's contribution to the UK report.³⁸⁷

Northern Ireland Disability Strategy 2012-2015

Strategic priority 16 of the Northern Ireland Disability Strategy seeks to 'increase the opportunities for people with disabilities to attain skills and qualifications through access to appropriate training and lifelong learning opportunities'. However, in spite of this measure aimed at fulfilling the right, the Disability Strategy does not explicitly address inclusive education, and thus is arguably not seeking to fulfil the full right in keeping with the UK reservation. Nor does the Strategy contain any specific action points directly related to Article 24. The following commitments from the Programme for Government were identified in the Disability Strategy as being related to Article 24:

- Increase the overall proportion of young people who achieve at least 5 GCSE's at A* - C;³⁸⁸
- Develop and implement a Strategy to reduce economic inactivity through skills, training, incentives and job creation;³⁸⁹
- Improve pathways to employment, tackle systemic issues linked to deprivation and increase community services through the Social Investment Fund;³⁹⁰
- Publish and implement a Childcare Strategy;³⁹¹

³⁸⁵ CRPD/C/GBR/1, 'Consideration of Reports Submitted by States Parties Under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland', 24 November 2011, at para 230.

³⁸⁶ CRPD/C/GBR/1, 'Consideration of Reports Submitted by States Parties Under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland', 24 November 2011, at para 231.

³⁸⁷ Northern Ireland Executive (2011) 'Northern Ireland Executive's Contribution to the UK Government Report to the United Nations Committee', pp.20-22, available at http://www.ofmdfmi.gov.uk/executives_contribution_to_the_uk_government_report_to_the_united_nations_committee_-_amended.pdf (Last visited 17 January 2014).

³⁸⁸ Office of the First Minister and Deputy First Minister (2013) 'The Disability Strategy 2012-2015', Belfast: OFMDFM, p.34.

³⁸⁹ *Ibid*, p.35.

³⁹⁰ *Ibid*, p.36.

- Introduce UNCRPD compliant measures to tackle poverty and social exclusion;³⁹²
- Support people (with an emphasis on young people) in to employment by providing skills and training;³⁹³
- Fulfil Child Poverty Act commitments;³⁹⁴
- Cap education fees;³⁹⁵
- Improve literacy and numeracy levels among all school leavers, with additional support targeted at underachieving pupils;³⁹⁶
- Ensure that at least one year of pre-school education is available to every family that wants it;³⁹⁷
- Reduce the level of serious crime (including hate crime);³⁹⁸
- Substantially complete the construction of the new Police, Prison and Fire Training College;³⁹⁹
- Develop sports stadiums as agreed with the IFA, GAA and Ulster Rugby;⁴⁰⁰
- Ensure all children have the opportunity to participate in shared education programmes by 2015 and substantially increase the number of schools sharing facilities by 2015;⁴⁰¹ and
- Include Social Clauses in public procurement contracts.⁴⁰²

³⁹¹ *Ibid*, p.37.

³⁹² *Ibid*, p.37.

³⁹³ *Ibid*, p.38.

³⁹⁴ *Ibid*, p.38.

³⁹⁵ *Ibid*, p.39.

³⁹⁶ *Ibid*, p.40.

³⁹⁷ *Ibid*, p.40.

³⁹⁸ *Ibid*, p.42.

³⁹⁹ *Ibid*, p.47.

⁴⁰⁰ *Ibid*, p.50.

⁴⁰¹ *Ibid*, p.51.

⁴⁰² *Ibid*, p.52.

Reconsideration of key Northern Ireland policies and programmes

The key change since the 2012 Report has been the development of policy proposals from the Special Educational Needs and Inclusion Review.⁴⁰³ The 2012 Report expressed concern that the Department of Education's policy proposals with respect to Special Educational Needs and Inclusion would weaken the existing entitlements of children with disabilities.⁴⁰⁴ In January 2012, the Education Minister outlined his key preferred proposals.⁴⁰⁵ The policy proposals were contained in the Policy Memorandum Paper⁴⁰⁶ agreed by the Executive on the 5th July 2012. The Policy Memorandum Paper provides substantive detail on the proposed changes. Among the proposed changes is the replacement of statements of special educational needs with Coordinated Support Plans (CSPs).

The proposals indicate that CSPs would be awarded to '**some** children in mainstream classrooms, all children in learning support centres attached to mainstream schools and all children in special schools.'⁴⁰⁷ As such, concern has been expressed at a potential substantial **decrease** in the number of children expected to gain a CSP in mainstream schools. The Northern Ireland Commissioner

⁴⁰³ Department of Education (2012) 'Summary Report of Responses to the Consultation on Every School a Good School – The Way Forward for Special Educational Needs and Inclusion and the associated Equality Impact Assessment', available at http://www.deni.gov.uk/sen_summary_report_-_english.pdf.

⁴⁰⁴ Harper, C, S McClenahan, B Byrne & H Russell (2012) 'Disability Programmes and Policies: How Does Northern Ireland Measure Up?', Belfast: Equality Commission for Northern Ireland, pp.184-195.

⁴⁰⁵ Department of Education (2012) 'Summary Report of Responses to the Consultation on Every School a Good School – The Way Forward for Special Educational Needs and Inclusion and the associated Equality Impact Assessment', Bangor: DENI. See also Department of Education (2009) 'Every School a Good School: The Way Forward for Special Educational Needs', Bangor: DENI. On 16th May 2012, the Minister presented a policy paper to the Education Committee. See also Committee for Education, Special Educational Needs and Inclusion, Official Report (Hansard) Northern Ireland Assembly, 18 January 2012, available at <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/January-2012/Committee-for-Education---Special-Educational-Needs/>.

⁴⁰⁶ Northern Ireland Executive (2012) 'Policy Memorandum Paper', available at http://www.deni.gov.uk/review_of_special_educational_needs_and_inclusion.htm

⁴⁰⁷ Department of Education (May 2012) 'Review of SEN and Inclusion: Minister's Presentation to the Committee for Education - Wednesday 16th May 2012 (Policy Development)', page 34, available at <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/May-2012/Review-of-Special-Educational-Needs-Ministerial-Briefing/>.

for Children and Young People has identified a number of issues and shortfalls with the existing proposals including:^{408 409}

- Concern that the Personalised Learning Plans (PLP) proposals will not meet the needs of children in a timely manner, consistent across all schools since responsibility for funding PLP actions will rest with individual schools and thus ‘within schools’;
- Concern of risk to principle of inclusion due to the selective nature of CSPs;
- Concern regarding the appeal pathways for children with PLPs – specifically, the need for statutory ‘trigger points’ and timescales;
- Disappointment that further progress has not been made to facilitate the child’s right to appeal to Special Educational Needs and Disability Tribunal (SENDIST); and
- Concern at the lack of meaningful involvement of children and young people in the development of the policy proposals.

Stakeholder engagement

These concerns were reiterated throughout the stakeholder events. One young person expressed concern at the lack of support in place for her to move from a special school to a mainstream school. Another young person highlighted difficulties with making the transition from school to college. This was reiterated by organisations who highlighted the problematic ‘silo working’ of departments. This lack of joint working was perceived as representing a lack of recognition of a ‘whole person’ and forcing people to be ‘a different person for each service’. Related to this is the disappointment that under the current policy proposals, there will be no duty to ensure that children with PLPs will have the same rights to transitions planning services as children with CSPs. Concern was expressed at attainment levels and the lack of data on this while others emphasised the severe lack of sign language

⁴⁰⁸ See NICCY Submission to the NI Assembly Committee for Education: 25 May 2012 http://www.niccy.org/uploaded_docs/2012/Consultations/Apr-July/NICCY%20submission%20to%20Education%20Committee%20re%20DE%20policy%20proposals%20on%20SEN%2025%205%2012%20FINAL.pdf Accessed 31 January 2014.

⁴⁰⁹ Children with Disabilities Strategic Alliance (2014) ‘The State of SEN statements: the case for specification and quantification’, Belfast: CDSA.

interpreters in the education system. One individual suggested that ‘barriers need to be removed and we need to stop trying to fit children with disabilities into a system that is not built for individuals.’

Further concern was raised at the Expert Seminar with emphasis being placed upon the relationship between diagnosis and subsequent access to equipment and services. The delay in obtaining appropriate diagnosis could therefore have a detrimental impact on access to appropriate services and subsequently on a child’s access to education. Parents and young people highlighted the difficulties associated with the ongoing ‘fight’ they had to undertake to get effective support and resources.

[Any significant gaps or shortfalls in Northern Ireland public policy and programmes](#)

The concerns expressed in the 2012 Report are still highly relevant. There is a risk that the existing policy proposals will dilute existing entitlements for children and young people with disabilities and lead to inconsistencies between children with disabilities depending on whether they are educated in special school or mainstream school and whether they receive a CSP or PLP. Additional concerns relate to: right of appeal, the involvement of children and young people in the revised framework, and ultimately to the achievement of an overall inclusive education system as set out in Article 24 UNCPRD.

[7.21 Article 25: Health](#)

[Jurisprudence of the UN Committee on the Rights of Persons with Disabilities](#)

In its consideration of the right to health, the UN Committee has focused quite narrowly on what is generally recognised in general human rights law as a right of broad scope, requiring extensive measures for its fulfilment. Key themes appear very strongly in both the Concluding Observations issued to date by the UN Committee and also in the Lists of Issues which have been submitted to State Parties. These themes are:

- Access to health, including sexual and reproductive health;⁴¹⁰
- Accessibility of health facilities and equipment;⁴¹¹
- Gathering statistics so that access to health services can be planned for people with disabilities, including statistics on levels of suicide amongst people with disabilities;⁴¹²
- The necessity of free and informed consent for medical procedures, including in mental health;⁴¹³
- Accessibility of public health information, including on HIV & AIDS;⁴¹⁴
- Targeting of public health information;⁴¹⁵
- Training for health personnel to better realise the right to health;⁴¹⁶ and
- The provision of services for early identification of disabilities (in particular deafness) designed to minimise and prevent further disabilities.⁴¹⁷

UK State Party Report and NI Executive Contribution to it

In its discussion of Article 25, the UK Report states that: ‘The UK is committed to reducing the difference in health outcomes between disabled and non-disabled people’.⁴¹⁸ With respect to Northern Ireland, the UK Report references the ‘Investing

⁴¹⁰ CRPD/C/ARG/CO/1 Concluding Observations: Argentina, at para 39; CRPD/C/CHN/CO/1 Concluding Observations: China, at para 38; CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at 52; CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 60; and CRPD/C/PER/CO/1 Concluding Observations: Peru, at para 39.

⁴¹¹ CRPD/C/ARG/CO/1 Concluding Observations: Argentina, at para 39; CRPD/C/CHN/CO/1 Concluding Observations: China, at para 38; CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at 52; and CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 60.

⁴¹² CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at 52.

⁴¹³ CRPD/C/ARG/CO/1 Concluding Observations: Argentina, at para 39; CRPD/C/CHN/CO/1 Concluding Observations: China, at para 38; and CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at 52.

⁴¹⁴ CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at 52.

⁴¹⁵ CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at 52.

⁴¹⁶ CRPD/C/ARG/CO/1 Concluding Observations: Argentina, at para 39; and CRPD/C/PER/CO/1 Concluding Observations: Peru, at para 39.

⁴¹⁷ CRPD/C/PER/CO/1 Concluding Observations: Peru, at para 39.

⁴¹⁸ CRPD/C/GBR/1, ‘Consideration of Reports Submitted by States Parties Under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland’, 24 November 2011, at para 252.

in Health⁴¹⁹ policy which aims at improving public health (including sexual health). This policy has a set of guiding principles which include equal access to health. The UK State Party Report states that with respect to Northern Ireland, 'Discussions with disabled people's organisations helped to identify their particular needs in terms of access to information, advice and services. Actions to help address these needs were then included to give easier access, for example the provision of information, support and personal development programmes and multi-professional training.'⁴²⁰

With respect to Article 25, the NI Executive Contribution to the UK State Party Report (pp. 22-23) largely matches what is contained in that Report. The Contribution provides further information in the form of specific examples of NI policies which are claimed to deliver on Article 25 of the UNCRPD. The most relevant of these in the light of the UN Committee jurisprudence is the Sexual Health Promotion Strategy.⁴²¹ It is claimed that this 'contains commitments to the further development of programmes which take account of the needs of those with a disability'.⁴²²

Northern Ireland Disability Strategy 2012-2015

The Disability Strategy only addresses health in relation to mental health,⁴²³ the need for joint working between health, social care, and housing agencies,⁴²⁴ and how access to sports and leisure improves health.⁴²⁵ It assigns the following Programme for Government commitments to Article 25:

⁴¹⁹ McClure Watters (2010) Investing for Health Strategy for DHSSPS, available at http://www.dhsspsni.gov.uk/health_development-final_report_-_september_2010.pdf.

⁴²⁰ CRPD/C/GBR/1, 'Consideration of Reports Submitted by States Parties Under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland', 24 November 2011, at para 257.

⁴²¹ Department of Health, Social Services & Public Safety (2009) 'Sexual Health Promotion Strategy and Action Plan 2008-2013', Belfast: DHSSPS, available at http://www.dhsspsni.gov.uk/dhssps_sexual_health_plan_front_cvr.pdf.

⁴²² CRPD/C/GBR/1, 'Consideration of Reports Submitted by States Parties Under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland', 24 November 2011, at para 257.

⁴²³ Office of the First Minister and Deputy First Minister (2013) 'The Disability Strategy 2012-2015', Belfast: OFMDFM, pp.16 & 23.

⁴²⁴ *Ibid*, p.28.

⁴²⁵ *Ibid*, p.31.

Introduce UNCRPD compliant measures to tackle poverty and social exclusion;⁴²⁶

Fulfil our commitments under the Child Poverty Act to reduce child poverty;⁴²⁷

Introduce programmes to address chronic condition management and obesity;⁴²⁸

Introduce a package of measures aimed at improving Safeguarding Outcomes for Children and Vulnerable Adults;⁴²⁹

Include Social Clauses in public procurement contracts;⁴³⁰ and

Improve patient and client outcomes and access to new treatments and services.⁴³¹

Reconsideration of key Northern Ireland policies and programmes

The 2012 Report provided a range of evidence relating to the difference in health outcomes between disabled and non-disabled people and there is no evidence that this difference has been ameliorated to any extent. The results of the 'Confidential Inquiry into premature deaths of people with a learning disability'⁴³² underline the striking extent to which this aspect of the right to health is not being respected by the NHS. Although this research was carried out in England, there is no reason to believe that the situation within health and social care in Northern Ireland is any better. Although the right to health was not identified as a key gap area in the 2012 Report, this bears reconsideration in the light of the above research.

⁴²⁶ *Ibid*, p.37.

⁴²⁷ *Ibid*, p.38.

⁴²⁸ *Ibid*, p.40-41.

⁴²⁹ *Ibid*, p.50.

⁴³⁰ *Ibid*, p.52.

⁴³¹ *Ibid*, p.53.

⁴³² Michael, J (2008) 'Healthcare for all: Report of the Independent Inquiry into access to healthcare for people with learning disabilities', available at: <http://www.bristol.ac.uk/cipold/fullfinalreport.pdf>. Also see the Briefing Paper by Mencap on the Confidential Inquiry which is available at: http://www.mencap.org.uk/sites/default/files/documents/Briefing_Confidential_Inquiry.pdf.

Transforming Your Care: A review of health and social care in Northern Ireland⁴³³ was published in December 2011. Its purpose is described by the Northern Ireland Health and Social Care Board in the following terms:

It is a report that highlights the need for change so that we can meet everyone's needs in the future. The report says that people are living longer and that demand for health and social care services will increase in future.

The report has a series of recommendations for how services can be delivered differently in future which will make best use of the resources available and ensure we can deliver safe, high quality, sustainable services now and into the future.⁴³⁴

With its clear drivers being 'demand' and 'resources', Transforming Your Care policy clearly has implications for the progressive realisation of the right to health of people with disabilities in Northern Ireland. The core of the Transforming Your Care policy agenda is a set of 99 proposals.⁴³⁵ These include explicit proposals with respect to:

- 'Physical disability' (6 proposals);
- 'Mental health' (10 proposals); and
- 'Learning disability' (9 proposals).

The proposals for these three areas are often of a more general nature and relate more to Article 19 (*Living independently and being included in the community*) than to the right to health as such. It is worth noting that one proposal for 'Physical Disability' is for a 'shift in the role of health and social care organisations towards being an enabler and information provider' which could in principle help to deliver on the UN Committee expectation of public health information being targeted to people with disabilities. This focus on information provision about public health messages is repeated in the proposals for 'Mental Health'. It is also stated in terms which are UNCRPD compliant most strongly in the proposals for Learning Disability' where the

⁴³³ The full report is available at: <http://www.dhsspsni.gov.uk/transforming-your-care-review-of-hsc-ni-final-report.pdf>.

⁴³⁴ See <http://www.transformingyourcare.hscni.net/frequently-asked-questions/>.

⁴³⁵ Health and Social Care Board (2013) 'Transforming Your Care: Vision to Action', Belfast: HSCB, pp. 135-41.

link is explicitly made between appropriate information provision and access to health and social care services.

The Transforming Your Care Strategic Implementation Plan⁴³⁶ identifies specific steps being taken to implement the Transforming Your Care policy. As in the policy, the Action Plan relates in many respects more to Article 19 than to Article 25. The Transforming Your Care policy was subject to an 'Equality, Good Relations and Human rights' screening exercise.⁴³⁷ This screening recognised that the particular situation of people with disabilities in Northern Ireland raises specific health-related issues for them, including with respect to Article 25 priorities identified by the UN Committee.

'In general people with disabilities are likely to be less well qualified, much less likely to be economically active and therefore in employment, much more likely to be in poverty, much less likely to enjoy active social life and more likely to suffer poor health including poor mental health.

Given the wide range and combination of conditions, those with physical and sensory impairments face a range of accessibility, attitudinal and communication barriers when accessing health and social care services and information.'⁴³⁸

It is too early to assess whether the disability specific proposals will successfully address these issues and prove to be progressive in terms of the UNCRPD. There is clear recognition of the challenges faced by people with disabilities in accessing health and social care services and information within the Transforming Your Care agenda. The detail of implementation needs to be worked out and the overall allocation of resources to specific proposals remains unclear. Although grounded in existing policies and strategies, the effect of lower level policy and programme changes based on the Transforming Your Care policy will need to be monitored over the envisaged timescale of the next 3-5 years, including through further focused

⁴³⁶ The Plan covers a period of 3-5 years starting from a 2011/12 baseline. Available at: <http://www.transformingyourcare.hscni.net/wp-content/uploads/2013/11/Transforming-Your-Care-Strategic-Implementation-Plan.pdf>. See pp. 43-46 in particular on disability.

⁴³⁷ Available at: http://www.hscbusiness.hscni.net/pdf/Screening_Template_TYC.pdf

⁴³⁸ Health and Social Care Board (2013) 'Transforming Your Care—Equality, Good Relations and Human Rights Screening Template', p.31, available at <http://www.transformingyourcare.hscni.net/wp-content/uploads/2013/11/Transforming-Your-Care-Equality-Screening.pdf>.

equality and human rights screening. Much of the roll out of the policy will be subject to intensive lobbying and a challenge for disabled people is their exclusion from political and public life as identified in the 2012 Report which is likely to impact significantly on their ability to prevent retrogression and shape this roll-out in a progressive way.

Stakeholder engagement

Health was one of the key topics raised in the stakeholder focus groups with a range of concerns being raised. Many of these concerns reflect the priorities of the UN Committee. It was felt that:

- The health service tends to provide a negative perception of disability (medical model) that others then adhere to;
- There is a lack of health information;
- There is a lack of equity in funding for mental health services;
- People with mental health issues are inappropriately dealt with through the criminal justice system;
- Access to health facilities, particularly accident and emergency services for those with mental health issues is difficult;
- There are unjust health inequalities for people with disabilities;
- There is a lack of adequate resources for the Transforming Your Care agenda;
- Health services are going down-hill and this needs to be addressed;
- Recent changes in policies limit the amount and type of assistance that an individual can receive (examples given included withdrawing cutting of toenails to certain people and denying someone access to a bath because 'severely disabled people take showers');
- There is no accountability of the senior staff within the Trusts;
- There is a division of services between long-term and short-term health concerns; and
- There are time limits on tasks for assistance/support that are not person specific (15 minutes to bath, 8 minutes to eat etc.).

In the Expert Seminar, several of the above were repeated along with concerns about transport to health services, particularly for people with disabilities in rural areas. Accessibility to health services is probably the major concern expressed.

Any significant gaps or shortfalls in Northern Ireland public policy and programmes

The Sexual Health Promotion Strategy⁴³⁹ does recognise that: ‘People with disabilities have particular needs and it is essential that appropriate training is given to ensure they receive a service that fully meets their needs.’⁴⁴⁰ The Strategy’s Action Plan does commit to ‘further develop community based programmes to promote sexual health and wellbeing including the prevention of STIs and HIV/AIDS’.⁴⁴¹ However, this is unlikely to suffice to satisfy the obligations of Article 25 as these programmes are to be developed ‘taking account of the needs of those with a disability’. There is no commitment to further specific programmes targeted at disabled people.

7.22 Article 26: Habilitation and rehabilitation

Jurisprudence of the UN Committee on the Rights of Persons with Disabilities

The key theme that has emerged from the UN Committee’s Concluding Observations to date is that the State should establish a framework to promote a rights-based approach to habilitation and rehabilitation services including informed consent and community services that address individual needs.⁴⁴²

⁴³⁹ Department of Health, Social Services & Public Safety (2008) ‘Sexual Health Promotion—Strategy and Action Plan: 2008-13’, Belfast: DHSSPS, available at http://www.dhsspsni.gov.uk/dhssps_sexual_health_plan_front_cvr.pdf.

⁴⁴⁰ *Ibid*, at para 2.38.

⁴⁴¹ *Ibid*, p.23.

⁴⁴² CRPD/C/AUS/CO/1 Concluding Observations: Australia, at para 48; CRPD/C/CHN/CO/1 Concluding Observations: China, at para 40; and CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 62.

The UK State Party Report and the NI Executive Contribution to it

The Northern Ireland Executive's Contribution to the UK Government Report does not mention Article 26. Nor does the UK State Party Report make any reference to Northern Ireland in its discussion of Article 26.⁴⁴³ It does however state that Article 26 should be considered in conjunction with articles 19, 24, and 27 in its report.

Northern Ireland Disability Strategy 2012-2015

The Disability Strategy references Article 26 in conjunction with existing Programme for Government commitments with regards to:

- Delivering more social and affordable homes (including improving thermal efficiency of Housing Executive houses);⁴⁴⁴
- Introduce programmes to address chronic condition management and obesity;⁴⁴⁵ and
- Increasing access to and outcomes from new treatments and services.⁴⁴⁶

It is not clear how the actions which are identified in the Disability Strategy for the purpose of promoting Article 26 are to be specifically measured and monitored.

Reconsideration of key Northern Ireland policies and programmes

The 2012 Report stated that Article 26 was cross-cutting and included in the analysis of all other articles (with particular emphasis on articles 5, 9, 19, and 25).⁴⁴⁷

The Physical and Sensory Disability Strategy includes two action points regarding rehabilitation: the promotion of effective rehabilitation (including good quality information, care planning, shared best practice, and a standardised approach to

⁴⁴³ *Ibid*, at para 289.

⁴⁴⁴ Office of the First Minister and Deputy First Minister (2013) 'The Disability Strategy 2012-2015', Belfast: OFMDFM, pp.35-37.

⁴⁴⁵ *Ibid*, pp.40-41.

⁴⁴⁶ *Ibid*, p.53.

⁴⁴⁷ Harper, C, S McClenahan, B Byrne & H Russell (2012) 'Disability Programmes and Policies: How Does Northern Ireland Measure Up?', Belfast: Equality Commission for Northern Ireland, p.210.

assessment and documentation) and a review of sensory rehabilitation services that promote cost effective and timely services.⁴⁴⁸

Transforming Your Care stated that respondents in the consultation had expressed the need for more rehabilitation and intermediate facilities for people living with mental illness⁴⁴⁹ and improved provision of vocational support and rehabilitation to people with physical and sensory disabilities in day-care services.⁴⁵⁰

Stakeholder engagement

Article 26 was not specifically mentioned but comments relating to articles 5, 9, 20, and 25 will also be relevant to Article 26.

Any significant gaps or shortfalls in Northern Ireland public policy and programmes

There are no significant gaps or shortfalls relating to Article 26 however the progress related to the Disability Strategy commitments identified by the Office of the First Minister and Deputy First Minister should be monitored for achievement with a particular emphasis on how they impact on the lives of disabled people.

7.23 Article 27: Work and employment

Jurisprudence of the UN Committee on the Rights of Persons with Disabilities

A number of key themes emerged from the UN Committee's Concluding Observations to date:

- Public policy is needed to promote the inclusion of people with disabilities in the labour market (including awareness-raising campaigns, implementation of reasonable adjustments and training and self-employment programmes);⁴⁵¹

⁴⁴⁸ Department of Health, Social Services & Public Safety (2012) 'Physical and Sensory Disability Strategy and Action Plan 201-2015', Belfast: DHSSPS, p.89.

⁴⁴⁹ Health and Social Care Board (2013) 'Transforming Your Care: Vision to Action', Belfast: HSCB, p.82.

⁴⁵⁰ *Ibid*, p. 92.

⁴⁵¹ CRPD/C/ARG/CO/1 Concluding Observations: Argentina, at para 44; CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 47; CRPD/C/CHN/CO/1 Concluding Observations: China,

- Enforcement measures for monitoring compliance with employment quotas for people with disabilities (including data collection)⁴⁵² and ensuring choice to pursue vocations are needed;⁴⁵³
- There should be an increase in the employment of women with disabilities by addressing additional barriers to their participation;⁴⁵⁴ and
- There need to be an assurance that there are correct assessments of wages of people in supported employment.⁴⁵⁵

The UK State Party Report and the NI Executive Contribution to it

The Northern Ireland Executive's Contribution to the UK Government Report discussed the role of the Disablement Advisory Service⁴⁵⁶ in providing programmes for disabled people of working age including New Deal for Disabled People (replaced by Work Connect),⁴⁵⁷ the Job Introduction Scheme,⁴⁵⁸ Access to Work,⁴⁵⁹ Workable (NI),⁴⁶⁰ Residential Training,⁴⁶¹ Conditions Management Programme,⁴⁶² Work

at para 42; CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 56; CRPD/C/HUN/CO/1 Concluding Observations: Hungary, at para 44; CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 64; CRPD/C/PER/CO/1 Concluding Observations: Peru, at para 41; CRPD/C/ESP/CO/1 Concluding Observations: Spain, at para 46; and CRPD/C/TUN/CO/1 Concluding Observations: Tunisia, at para 34.

⁴⁵² CRPD/C/ARG/CO/1 Concluding Observations: Argentina, at para 44 and CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 45.

⁴⁵³ CRPD/C/CHN/CO/1 Concluding Observations: China, at para 42; CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 56; CRPD/C/HUN/CO/1 Concluding Observations: Hungary, at para 44; CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 64; CRPD/C/PER/CO/1 Concluding Observations: Peru, at para 41; and CRPD/C/TUN/CO/1 Concluding Observations: Tunisia, at para 34.

⁴⁵⁴ CRPD/C/AUS/CO/1 Concluding Observations: Australia, at para 50; CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 46; CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 56; CRPD/C/HUN/CO/1 Concluding Observations: Hungary, at para 44; CRPD/C/ESP/CO/1 Concluding Observations: Spain, at para 46; and CRPD/C/TUN/CO/1 Concluding Observations: Tunisia, at para 34.

⁴⁵⁵ CRPD/C/AUS/CO/1 Concluding Observations: Australia, at para 50 and CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 44.

⁴⁵⁶ Additional information available at http://www.delni.gov.uk/das_information_booklet_cover_feb_2009.pdf.

⁴⁵⁷ See <http://www.nidirect.gov.uk/work-connect> for more information.

⁴⁵⁸ Additional information available at <http://www.nidirect.gov.uk/job-introduction-scheme>.

⁴⁵⁹ Additional information available at <http://www.nidirect.gov.uk/access-to-work-practical-help-at-work>.

⁴⁶⁰ Additional information available at <http://www.nidirect.gov.uk/workable-ni>.

Preparation Programme,⁴⁶³ and European Social Fund Projects.^{464 465} The UK State Party Report discusses the protection that the Equality Act 2010 provides for disabled people in GB in relation to work⁴⁶⁶ and programmes outlined in Northern Ireland's contribution to the UK State Party Report.⁴⁶⁷ It also talks about the introduction of the free online resource offering advice on recruitment and disability⁴⁶⁸ and explains the reservation placed on Article 27 in regards to service in the Armed Forces.⁴⁶⁹

Northern Ireland Disability Strategy 2012-2015

The Disability Strategy considers Article 27 with Article 24 in relation to increasing the number of people with disabilities entering all levels of employment and safeguarding those already in work⁴⁷⁰ as well as increasing opportunities for disabled people to attain skills and qualifications through appropriate training and learning opportunities.⁴⁷¹ The Disability Strategy associates the following Programme for Government commitments with Article 27:

⁴⁶¹ Additional information available at <http://www.nidirect.gov.uk/residential-training-for-adults-with-disabilities>.

⁴⁶² Additional information available at <http://www.nidirect.gov.uk/condition-management-programme>

⁴⁶³ Additional information available at http://www.delni.gov.uk/das_information_booklet_cover_feb_2009.pdf.

⁴⁶⁴ Additional information available at <http://www.delni.gov.uk/index/esf.htm>.

⁴⁶⁵ Northern Ireland Executive (2011) 'Northern Ireland Executive's Contribution to the UK Government Report to the United Nations Committee', at 24-26. Available at http://www.ofmdfmi.gov.uk/executives_contribution_to_the_uk_government_report_to_the_united_nations_committee_-_amended.pdf (Last visited 17 January 2014).

⁴⁶⁶ CRPD/C/GBR/1, 'Consideration of Reports Submitted by States Parties Under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland', 24 November 2011, at para 292 & 294.

⁴⁶⁷ *Ibid*, at para 301.

⁴⁶⁸ See <http://www.clearkit.co.uk/> for more information.

⁴⁶⁹ CRPD/C/GBR/1, 'Consideration of Reports Submitted by States Parties Under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland', 24 November 2011, at para 307.

⁴⁷⁰ Office of the First Minister and Deputy First Minister (2013) 'The Disability Strategy 2012-2015', Belfast: OFMDFM, p.22.

⁴⁷¹ *Ibid*, p.23.

- Develop and implement a Strategy to reduce economic inactivity through skills, training, incentives and job creation;⁴⁷²
- Invest to improve pathways to employment, tackle systemic issues linked to deprivation and increase community services through the Social Investment Fund and use the Social Protection Fund to help people facing hardship;⁴⁷³
- Introduce UNCRPD compliant measures to tackle poverty and social exclusion;⁴⁷⁴
- Support people (with an emphasis on young people) in to employment by providing skills and training;⁴⁷⁵
- Fulfil our commitments under the Child Poverty Act to reduce child poverty;⁴⁷⁶
- Cap education fees;⁴⁷⁷
- Establish an advisory group to assist Ministers in alleviating hardship including any implications of the UK Government's Welfare Reform Programme;⁴⁷⁸
- Tackle rural poverty and social and economic isolation in the next three years;⁴⁷⁹ and
- Reduce the level of serious crime (including hate crime).⁴⁸⁰

Reconsideration of key Northern Ireland policies and programmes

The 2012 Report identified links between articles 5, 8, and 27 and discussed concerns with the Disablement Employment advisors being replaced by more generic Employment advisors and a decrease in the service of Access to Work

⁴⁷² *Ibid*, pp.33-35.

⁴⁷³ *Ibid*, pp.36-37.

⁴⁷⁴ *Ibid*, p.37.

⁴⁷⁵ *Ibid*, p.38.

⁴⁷⁶ *Ibid*, p.38.

⁴⁷⁷ *Ibid*, p.39.

⁴⁷⁸ *Ibid*, p.39.

⁴⁷⁹ *Ibid*, p.41.

⁴⁸⁰ *Ibid*, p.42.

Advisors.⁴⁸¹ The Autism Strategy aims to increase awareness about the support available and promote opportunities to people with autism for employment and training/learning.⁴⁸² The Physical and Sensory Disability Strategy states that an infrastructure of socio-vocational services has been developed to enhance inclusion of people with disabilities and that this 'should be supported and developed as far as resources will allow'.⁴⁸³ The Bamford Action Plan 2010-2015 aims to increase the number of people with mental health problems and learning disabilities directly employed by Government Departments and the HSC sector.⁴⁸⁴ Transforming Your Care aims to continue to develop age-appropriate day opportunities (including access to employment) for people with a learning disability.⁴⁸⁵

The Department for Employment and Learning has produced a number of resources that are available on their website⁴⁸⁶ including:

- Occupational Psychology Services;
- Disablement Employment Service (including Job Introduction Scheme and Conditions Management Programme);
- Employing people with autism: a brief guide for employers;
- Supported employment solutions: learning disability and mental health guide for effective support and sign posting;
- Funding for students with disabilities additional support fund; and
- Data on students with disabilities enrolled in higher education.

⁴⁸¹ Harper, C, S McClenahan, B Byrne & H Russell (2012) 'Disability Programmes and Policies: How Does Northern Ireland Measure Up?', Belfast: Equality Commission for Northern Ireland, pp.219-220.

⁴⁸² Department of Health, Social Services & Public Safety (2013) 'The Autism Strategy (2013-2020) and Action Plan (2013-2016)', Belfast: DHSSPS, p.13.

⁴⁸³ Department of Health, Social Services & Public Safety (2012) 'Physical and Sensory Disability Strategy and Action Plan 201-2015', Belfast: DHSSPS, p.66.

⁴⁸⁴ Department of Health, Social Services & Public Safety (2012) 'Delivering the Bamford Vision: The Response of the Northern Ireland Executive to the Bamford Review of Mental Health and Learning Disability Action Plan 2012-2015', Belfast: DHSSPS, p.66.

⁴⁸⁵ Health and Social Care Board (2013) 'Transforming Your Care: Vision to Action', Belfast: HSCB, p.83.

⁴⁸⁶ More information available at <http://www.delni.gov.uk/es/index/finding-employment-finding-staff/fe-fs-help-to-find-employment/des.htm> (Last visited 26 February 2014).

Nearly all of the departmental Disability Action Plans made a commitment to ensuring that public appointments were made available to candidates with disabilities (only the Department of Education did not).⁴⁸⁷

Stakeholder engagement⁴⁸⁸

Article 27 was raised by a number of participants at the stakeholder consultation events. Some of the comments included:

- There isn't enough support for real employment and careers;
- The lack of capacity building and stereotypical presumptions as to what people with disabilities are capable of achieving is a major barrier to employment; and
- 'I would like to work full-time but there aren't enough jobs'.

Employment and work was also discussed at the Expert Seminar where people spoke of the restrictions of transportation as well as the lack of employers willing to hire disabled people or make reasonable adjustments if the person becomes disabled or their condition worsens.

Any significant gaps or shortfalls in Northern Ireland public policy and programmes

The Department for Employment and Learning has put in place a number of policies and programmes aimed at improving the number of disabled people in employment, yet employment rates remain low (38% of disabled people were employed compared with 75% of non-disabled people between July and September 2013).⁴⁸⁹ More effort

⁴⁸⁷ Department for Employment and Learning Disability Action Plan 2011-2014, p.23; Department of Culture, Arts & Leisure Disability Action Plan 2010-2013, p.15; Department of Agriculture and Rural Development Disability Action Plan 2010-2013, p.16; Department of Enterprise, Trade & Investment Disability Action Plan, pp.5-6 and 9; Department of Health, Social Services & Public Safety Disability Action Plan 2012-2014, p.20; Department of the Environment Disability Action Plan 2012-2014, p.20; Department of Justice Disability Action Plan 2012-2015, p.21; Department for Regional Development Disability Action Plan 2013-14, p.14; Department for Social Development Disability Action Plan 2011-2013, p.17; and Department of Finance & Personnel Disability Action Plan 2010-2013, pp.5-6.

⁴⁸⁸ The discussion on Article 28 below is also relevant to this section.

⁴⁸⁹ Department of Finance and Personnel, 'Northern Ireland Labour Force Survey: July-September 2013', (November 2013), p.22. Available at http://www.detini.gov.uk/lfs_quarterly_supplement_july-september_2013.pdf (Last visited 6 March 2014).

needs to be put into challenging the stigmas associated with employing someone with a disability and the importance of reasonable adjustments. The impact that Welfare Reform is likely to have on employment opportunities for people with disabilities is also a concern (also see 7.28 of the present report).

7.24 Article 28: Adequate standard of living and social protection

Jurisprudence of the UN Committee on the Rights of Persons with Disabilities

The UN Committee, within its Concluding Observations, has explicated a number of implicit obligations within Article 28 of the UNCPRD. These include the obligations that:

- Social security legislation must be inclusive;
- Assessments must be individual-based;
- Standards for approving disability allowance should be uniform;
- Public policies should provide access to development for persons with disabilities and their families, including guarantees of decent housing on an equal footing. Paying particular attention to persons living in rural areas;
- Social protection and non-contributory pension schemes must be accessible;
- Public policies should be adopted, particularly concerning poverty reduction;
- The necessary budget is allocated for policy implementation; and
- Measures should be adopted that eliminate barriers. This includes basic services, drinking water and sanitation in rural and remote areas.

The UK State Party Report and the NI Executive Contribution to it

The UK State Party Report notes that Government is 'committed to supporting disabled people, to improving the quality of life of those facing disadvantage, and to

tackling poverty by addressing its causes.⁴⁹⁰ However, as highlighted in the 2012 Report, the definition used to measure poverty continues to be based on an 'income only' method and, as a result, continues to fail to take into account household variation by disability and the additional costs of disability. The UK State Party Report also fails to provide poverty figures that are inclusive of Northern Ireland. Indeed, Article 28 was not addressed at all by the Northern Ireland Executive in its contribution.

The UK State Party Report acknowledges that a radical Welfare Reform programme has been introduced to 'tackle entrenched poverty and end intergenerational worklessness'.⁴⁹¹ The cited aim of the reforms is to 'deliver a system that is simpler, fairer, and in which work always pays'.⁴⁹²

Northern Ireland Disability Strategy 2012-2015

Promoting Article 28 of the UNCRPD has been identified as a strategic priority in the Northern Ireland Disability Strategy. The programmes introduced under Programme for Government commitments include:

- Deliver 8,000 social and affordable homes that will include homes adapted to meet the needs of people with disabilities;⁴⁹³
- Improve thermal efficiency of homes and health benefits with a view to reducing fuel poverty;⁴⁹⁴
- Provide £40 million to promote investment in physical regeneration as a way of tackling social exclusion;⁴⁹⁵

⁴⁹⁰ CRPD/C/GBR/1, 'Consideration of Reports Submitted by States Parties Under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland', 24 November 2011, at para 308.

⁴⁹¹ CRPD/C/GBR/1, 'Consideration of Reports Submitted by States Parties Under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland', 24 November 2011, at para 308.

⁴⁹² CRPD/C/GBR/1, 'Consideration of Reports Submitted by States Parties Under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland', 24 November 2011, at para 308.

⁴⁹³ Office of the First Minister and Deputy First Minister (2013) 'The Disability Strategy 2012-2015', Belfast: OFMDFM, p.35.

⁴⁹⁴ *Ibid*, p.36.

⁴⁹⁵ *Ibid*, p.36.

- Introduce UNCRPD compliant measures to tackle poverty and social exclusion;⁴⁹⁶
- Use the Social Protection Fund to help people facing hardship;⁴⁹⁷
- Fulfil the Child Poverty Act commitments;⁴⁹⁸
- Delay domestic water charges;⁴⁹⁹
- Cap education fees;⁵⁰⁰
- Create an advisory group to assist Ministers in alleviating hardship including any implications of Welfare Reform;⁵⁰¹
- Tackle rural poverty and social and economic isolation;⁵⁰² and
- Reduce the level of serious crime (including hate crime).⁵⁰³

The Strategy also states that any Welfare Reform should follow the social model of disability. However it is not clear how the actions which are identified in the Strategy for the purpose of promoting Article 28 are to be specifically measured and monitored.

Reconsideration of Key Northern Ireland Policies and Programmes

The key area of change with respect to Article 28 is the ongoing Welfare Reform agenda. Whilst this has been enacted in legislation in GB and is currently at Committee stage in the NI Assembly, it has significant implications for policies and programmes. The Welfare Reform announcements have been ‘widely described as the most radical shake-up of the benefits system since the foundation of the welfare

⁴⁹⁶ *Ibid*, p.37.

⁴⁹⁷ *Ibid*, p.37.

⁴⁹⁸ *Ibid*, p.38.

⁴⁹⁹ *Ibid*, p.39.

⁵⁰⁰ *Ibid*, p.39.

⁵⁰¹ *Ibid*, p.39.

⁵⁰² *Ibid*, p.41.

⁵⁰³ *Ibid*, p.42.

state'.⁵⁰⁴ Whilst social security in NI is, in principle, a devolved matter, 'in practice, however, the GB and NI social security schemes are maintained in close parity'.⁵⁰⁵

In addition to the introduction of 'Universal Credit',⁵⁰⁶ the key reform is the replacement of Disability Living Allowance (DLA) for those aged 16-64 years old with the Personal Independence Payment (PIP). The PIP will be awarded based on the individual, the impact of the disability or health condition, and the extent to which they are able to live independently. The condition must last 12 months or more and claimants will be subject to regular reassessments. Special rules will be applied to terminally ill claimants (those not expected to live longer than six months). The Government claims that PIP will create a 'more transparent and sustainable benefit that has a more objective assessment of individual need'.⁵⁰⁷

The spare room subsidy (also known as the bedroom tax) is also to be introduced. This allows for one bedroom for each person or couple living as part of the household. The exceptions include households with a non-resident carer. If introduced those who are under-occupying their household will experience a reduction in housing benefit – 14% for one bedroom and 25% for two or more.

Stakeholders Engagement

Participants felt that the proposed Welfare Reforms lack the needed unified approach. Concern has been expressed at the change in welfare assessments. Referring to the current system, some felt that the social model was being misapplied, while others felt that a medical model was being followed. Both are

⁵⁰⁴ NIA (2011), An Introduction to Welfare Reform, Assembly Research and Library Service Briefing Paper 13/11, NIAR 606-10

⁵⁰⁵ OPSI (Office of Public Sector Information) (2006) Explanatory memorandum to the Northern Ireland Act 1998 (Modification Order) 2006: 2006 No. 2659, London: DWP, www.opsi.gov.uk/si/em2006/uksiem_20062659_en.pdf, p.6.

⁵⁰⁶ Universal Credit is a single benefit payment available to people 18-64 years old that will be paid to each household. It is expected to be introduced in Northern Ireland in the summer of 2014. Additional information available at <http://www.nidirect.gov.uk/introduction-to-universal-credit>.

⁵⁰⁷ CRPD/C/GBR/1, 'Consideration of Reports Submitted by States Parties Under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland', 24 November 2011, at para 311.

counterproductive. Participants stressed that disabled people are living on the poverty line and experiencing a lack of employment opportunities. It was highlighted that instead of these problems being recognised, that disabled people are stigmatised as ‘benefit scroungers’ and ‘risky’ in terms of employment. Some participants were also afraid that they would lose their benefits if they got a job. There was resounding concern that the proposed reforms would make disabled people’s financial situation worse and lead to retrogression with respect to Article 28. It was particularly concerning that there has been no effective assessment of the impact of the potential reforms on disabled people.

These issues were reiterated at the Expert Seminar. Article 28 was highlighted as an important cross-cutting issue impacting on the ability to enjoy other rights. Participants suggested the Welfare Reform Bill had brought about a climate of fear for people with disabilities with fears over new indicators for PIPs and bedroom tax, and the prospect of disabled people ‘failing’ the more stringent and medicalised capability assessments.

Any Significant Gaps or Shortfalls in Northern Ireland Public Policy and Programmes

Significant concerns have been raised as to the potential impacts of Welfare Reform throughout the UK. As Beatty and Fothergill note, ‘The impact of the reforms ... will vary enormously from place to place, not least because benefit claimants are so unevenly spread.’⁵⁰⁸ In Northern Ireland, 10.6% of the working-age population are claiming Incapacity Benefit (IB) or Employment and Support Allowance (ESA)⁵⁰⁹ compared to 6.6% in Great Britain (GB). Moreover, just over 1 in 10 people in Northern Ireland are in receipt of disability living allowance (DLA) in comparison to

⁵⁰⁸ Beatty, C & S Fothergill (2013) *Hitting the Poorest Places Hardest: The local and regional impact of welfare reform*. Sheffield: CRESR, Sheffield Hallam University.p.4

⁵⁰⁹ Incapacity Benefit was provided to people that were unable to work because of illness or disability prior to 31 January 2011 but people should now claim Employment and Support Allowance. Additional information is available at <http://www.nidirect.gov.uk/index/information-and-services/people-with-disabilities/financial-support-for-people-with-disabilites/incapacity-benefit-people-with-disabilities/incapacity-benefit-introduction.htm> and <http://www.nidirect.gov.uk/employment-and-support-allowance-eligibility>.

GB where the corresponding figure is just over 1 in 20.⁵¹⁰ There is thus concern that disabled people in NI will be disproportionately affected by the reforms, leading to inconsistency across the State party.

Research suggests that individuals adversely affected by the incapacity benefit reforms can expect to lose an average of almost £3,500 a year, and those losing out as a result of the changeover from DLA to PIP by an average of more than £2,000 a year.⁵¹¹ The more stringent and frequent medical tests under PIP are particularly concerning. Whilst individual based, it is argued that the nature of this will lead to a medical, not social, model of disability.⁵¹² Further concerns have been raised in relation to the lack of an arrears system under PIP. For example, those wrongly held on remand do not qualify for their claim to be backdated for the entire period of their wrongful custody.

It has been suggested that the cuts to the child disability additions and the Severe Disability Premium, to be introduced by Universal Credit, will leave disabled people and their families struggling to pay for basic essentials, thus with the potential to increase rather than reduce levels of poverty. For example, under this reform severely disabled people who do not have another adult to assist them will receive £28 to £58 less per week in support.⁵¹³

It is estimated that if bedroom tax is introduced it will affect 32,000 households in Northern Ireland.⁵¹⁴ The tax has been criticised for failing to take into account that a spare room may be needed to accommodate equipment for a person with disabilities

⁵¹⁰ also MacInnes T, Aldridge H, Parekh A, Kenway P (2012) Monitoring poverty and social exclusion in Northern Ireland, Joseph Rowntree Foundation, available at <http://www.jrf.org.uk/sites/files/jrf/poverty-northern-ireland-social-exclusion-2012-full.pdf>.

⁵¹¹ Beatty, C & S Fothergill (2013) *The Impact of Welfare Reform on Northern Ireland*, Belfast: NICVA.

⁵¹² The Minister for Disabled People announced on 27 March 2014 that Atos, the company which assesses benefit claimants, are to have their contract ended early and that a new company would be appointed in early 2015.

⁵¹³ Disability Rights UK, Citizens Advice Bureau and The Children's Society (2013) 'Holes in the Safety Net: The Impact of Universal Credit on Disabled People and Their Families', London: The Children's Society, p.3.

⁵¹⁴ http://www.cih.org/news-article/display/vpathDCR/templatedata/cih/news-article/data/Bedroom_tax_to_cost_more_than_it_can_save

in the household.⁵¹⁵ In 2013, the UN Special Rapporteur on Housing expressed deep concern at the impact of the spare room subsidy and stated that this could constitute a violation of the human right to housing.⁵¹⁶

7.25 29: Participation in political and public life

Jurisprudence of the UN Committee on the Rights of Persons with Disabilities

The UN Committee, within its Concluding Observations, has explicated a number of implicit obligations within Article 29 of the UNCRPD. These include the obligations to adopt measures that:

- Ensure persons with disabilities, regardless of their impairment, legal status or place of residence (particularly the institutionalised) can exercise their right to vote and participate in public life, on an equal basis with others;⁵¹⁷
- Ensure that persons with disabilities can run for public office;⁵¹⁸
- Ensure that all persons with disabilities who are elected to a public position are provided with support, including personal assistants;⁵¹⁹
- Support the enjoyment of Article 29, including providing training and permitting alternative voting options;⁵²⁰
- Increase the opportunities for political and social participation of organisations of persons with disabilities;⁵²¹ and

⁵¹⁵ Northern Ireland Welfare Reform Group (2012) 'Social Development Committee: Welfare Reform Bill (Northern Ireland) 2012', p. 12, available at <http://www.lawcentreni.org/Publications/Policy-Briefings/WRG-Social-Development-Committee-OCT-2012.pdf> (Last visited 13 January 2014).

⁵¹⁶ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik. UK Country Report, 30 December 2013, A/HRC/25/54/Add.2.

⁵¹⁷ CRPD/C/ARG/CO/1 Concluding Observations: Argentina, at para 48; CRPD/C/AUS/CO/1 Concluding Observations: Australia, at para 52; CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 49; CRPD/C/CHN/CO/1 Concluding Observations: China, at para 46; CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 60; CRPD/C/HUN/CO/1 Concluding Observations: Hungary, at para 46; CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 70; CRPD/C/PER/CO/1 Concluding Observations: Peru, at para 45; CRPD/C/ESP/CO/1 Concluding Observations: Spain, at para 48; and CRPD/C/TUN/CO/1 Concluding Observations: Tunisia, at para 35.

⁵¹⁸ CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 60.

⁵¹⁹ CRPD/C/ESP/CO/1 Concluding Observations: Spain, at para 48.

⁵²⁰ CRPD/C/PER/CO/1 Concluding Observations: Peru, at para 45.

- Provide voting information in all accessible formats.⁵²²

The UK State Party Report and the NI Executive Contribution to it

In the UK, people with disabilities have the same right to vote as everyone else and the decision on whether and how to vote is their own. This includes people with learning disabilities and/or mental health conditions and residents in psychiatric hospitals (unless they have been detained under certain sections of the mental health legislation or are a convicted criminal offender).

The UK addresses the barriers to voting for disabled people by providing:

- Polling stations with reasonable physical adjustments;
- Enlarged print ballot papers;
- A tactile voting device;
- Low-level polling;
- The option for someone else to mark the ballot paper;
- Documents in other languages and formats, including pictures, Braille and audio format;
- Guides on how to vote, including an animated film; and
- Guidance for local authorities on how to make voting accessible.

In Northern Ireland everyone, including disabled people can vote by post, but a reason must be given for doing so. This is not required in GB. A vote by proxy option is also available through the Electoral Office for Northern Ireland.⁵²³

The UK acknowledges that there is an under-representation of disabled people in political and public life. Moves are being made in GB to address this including consultations, the establishment of a support fund for disability costs related to

⁵²¹ CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 60.

⁵²² CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 49.

⁵²³ Additional information is available at <http://www.eoni.org.uk/Vote/Voting-by-post-or-proxy>.

seeking elected office, and awareness-raising campaigns.⁵²⁴ However, there does not appear to be evidence of such efforts in Northern Ireland.⁵²⁵

Northern Ireland Disability Strategy 2012-2015

Strategic priority 1 of the Disability Strategy is to ‘increase people with disabilities’ opportunity to influence policies and programmes in Government.’ However, the Strategy only identifies one planned programme to ensure this priority – to invest in social enterprise growth to increase sustainability in the broad community sector.⁵²⁶ This programme is welcomed, but fails to fully address the gaps identified in the 2012 Report.

Reconsideration of Key Northern Ireland Policies and Programmes

The barriers set out in the 2012 Report continue: disabled people continue to be under-represented in the Northern Ireland Assembly, Westminster and other public appointments. For example, during 2011-12 public appointments data showed that less than 1% of those appointed were disabled (compared to 2% in the previous period).⁵²⁷ Accessibility barriers continue in 67% of polling stations and for 47% of people using postal voting.⁵²⁸

Departmental Disability Action Plans made commitments to improving participation in public life;⁵²⁹ improving consultation with persons with disabilities,⁵³⁰ and increasing

⁵²⁴ CRPD/C/GBR/1, ‘Consideration of Reports Submitted by States Parties Under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland’, 24 November 2011, at paras 322-326.

⁵²⁵ *Ibid*, at paras 322-326.

⁵²⁶ Office of the First Minister and Deputy First Minister (2013) ‘The Disability Strategy 2012-2015’, Belfast: OFMDFM, p.33.

⁵²⁷ Office of the First Minister and Deputy First Minister (2012) ‘Public Appointments Annual Report 2011/12’ page 16. Available at: <http://www.ofmdfmni.gov.uk/index/making-government-work/public-appointments/public-appointments-annual-reports.htm>

⁵²⁸ Capability Scotland, Disability Action & Scope (2010) ‘Polls Apart 2010: Opening Elections to Disabled People’.

⁵²⁹ Department of Culture, Arts & Leisure Disability Action Plan 2010-2013, p. 8; Department of Education Disability Action Plan 2013-2015, p.14; Department of Enterprise, Trade & Investment Disability Action Plan, p.9; Department of Health, Social Services & Public Safety Disability Action Plan 2012-2014, p.20; Department of the Environment Disability Action Plan 2012-2014, pp.14-15;

engagement with disability organisations to ensure disabled people are represented.⁵³¹ Similarly, the Departmental Equality Schemes also highlight commitments to consultation with people most affected by changes to policies.⁵³²

Stakeholders Engagement

Participants highlighted a number of issues that need to be addressed to ensure the realisation of Article 29. These include:

- Increasing access to affordable and accessible transport;
- Using accessible venues (including meeting spaces and parking);
- Raising awareness of disability issues from childhood;
- Improving awareness of disability issues among professionals and service providers;
- Providing more capacity building and confidence building for disabled people;
- Reframing attitudes away from a tick-box exercise towards a rights-based approach;
- Increasing the public profile of disabled people – more disabled politicians;
- Increasing training and work opportunities for disabled people;

Department for Regional Development Disability Action Plan 2013-14, p.12; and Department of Social Development Disability Action Plan 2011-2013, p.17.

⁵³⁰ Department for Employment and Learning Disability Action Plan 2011-2014, p.20-22; Department of Enterprise, Trade & Investment Disability Action Plan, p.10; Department of Health, Social Services & Public Safety Disability Action Plan 2012-2014, pp.12-15; and Department of Justice Disability Action Plan 2012-2015, p.22.

⁵³¹ Department for Employment and Learning Disability Action Plan 2011-2014, p.20; Department of Culture, Arts & Leisure Disability Action Plan 2010-2013, p. 11; Department of Agriculture and Rural Development Disability Action Plan 2010-2013, pp.11 & 15; Department of Enterprise, Trade & Investment Disability Action Plan, p.11; Department of Health, Social Services & Public Safety Disability Action Plan 2012-2014, pp.12-15; and Department of Justice Disability Action Plan 2012-2015, p.22.

⁵³² Department for Employment and Learning Equality Scheme 2011, pp.11-13; Department of Culture, Arts & Leisure Equality Scheme 2011, pp.16-20; Department of Agriculture and Rural Development Equality Scheme 2011, pp.16-20; Department of Education Equality Scheme 2013, pp.6-8; Department of Enterprise, Trade & Investment Equality Scheme 2012, pp.11-14; Department of Health, Social Services & Public Safety Equality Scheme 2012, pp.20-24; Department of the Environment Equality Scheme 2012, pp.15-19; Department of Justice Equality Scheme 2012, pp.14-17; Department for Regional Development Equality Scheme 2011, pp.14-18; Department for Social Development Equality Scheme 2013, pp.12-14; Department of Finance & Personnel Equality Scheme 2011, pp.12-15; and The Office of the First Minister and Deputy First Minister Equality Scheme 2011, pp.31-33.

- Requiring politicians to engage more with disabled people – politicians should listen and the political language used should be simplified;
- Increasing support for the transition to independent living; and
- Challenging the stigma against mental health.

Any significant gaps or shortfalls in Northern Ireland public policy and programmes

The participation of disabled people in political and public life continues to be a concern. Awareness and accessibility to information has improved, but to a minimal extent. This could be enhanced by adopting the additional measures in NI that GB has put in place. Furthermore, disabled people continue to face barriers and underrepresentation. A significant issue is the failure of measures that do exist to have an impact in practice. Therefore, the concerns highlighted in the 2012 Report remain.

7.26 Article 30: Participation in cultural life, recreation, leisure and sport

Jurisprudence of the UN Committee on the Rights of Persons with Disabilities

Of the countries that have been examined by the UN Committee, only El Salvador has received recommendations pertaining to Article 30. The State was urged to 'continue to devise policies and measures to ensure participation in cultural life, recreational activities, relaxation and sports by persons with disabilities'.⁵³³

The UK State Party Report and the NI Executive Contribution to it

The Northern Ireland Executive's Contribution to the UK Government Report identified a number of policies and programmes aimed at addressing Article 30 including: the Inclusive Sports Facilities accreditation scheme,⁵³⁴ reduced rate fishing licences and permits and accessible fishing stands;⁵³⁵ the Cinema Access

⁵³³ CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 62.

⁵³⁴ Additional information available at <http://www.sportni.net/NR/rdonlyres/0CD478CA-CD33-422E-BBEB-EA4FEE621061/0/ISFAccreditationScheme.pdf>.

⁵³⁵ Additional information available at <http://www.dcalni.gov.uk/disabled-angling-guidev2.pdf>.

Programme;⁵³⁶ the Arts Council NI 'Premium Payments' scheme to increase accessibility and Participation Access Group;⁵³⁷ the Sign Language Partnership Group;⁵³⁸ and the 'Delivering Tomorrow's Libraries' policy for accessibility.^{539 540} The UK State Party Report committed to 'providing disabled people with equal opportunities to participate in culture, recreation, leisure and sport'.⁵⁴¹

Northern Ireland Disability Strategy 2012-2015

Article 30 is identified within the theme 'Being Part of the Community' in the Disability Strategy⁵⁴² with strategic priority 18 devoted to improving access to sport, arts, leisure and other cultural activities. Within the Disability Strategy, Article 30 is linked to the following Programme for Government commitments:

- Develop programmes to tackle obesity;⁵⁴³
- Develop sports stadiums as agreed with the IFA, GAA and Ulster Rugby;⁵⁴⁴ and
- Include Social Clauses in public procurement contracts.⁵⁴⁵

⁵³⁶ Additional information available at http://www.northernirelandscreen.co.uk/DatabaseDocs/doc_3560196.pdf.

⁵³⁷ Additional information available at http://www.artscouncil-ni.org/images/uploads/publications-documents/annual_progress_1213.pdf.

⁵³⁸ Additional information available at http://www.dcalni.gov.uk/language-cultural-diversity-r08/sign_language.htm.

⁵³⁹ Department of Culture, Arts & Leisure (2006) 'Delivering Tomorrow's Libraries', available at http://www.dcalni.gov.uk/final__delivering_tomorrow_s_libraries__document_-_july_2007_-_1mb_document_for_website.pdf.

⁵⁴⁰ Northern Ireland Executive (2011) 'Northern Ireland Executive's Contribution to the UK Government Report to the United Nations Committee', available at http://www.ofmdfmi.gov.uk/executives_contribution_to_the_uk_government_report_to_the_united_nations_committee_-_amended.pdf (Last visited 17 January 2014).

⁵⁴¹ CRPD/C/GBR/1, 'Consideration of Reports Submitted by States Parties under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland', 24 November 2011, at para 327.

⁵⁴² Office of the First Minister and Deputy First Minister (2013) 'The Disability Strategy 2012-2015', Belfast: OFMDFM, p.24.

⁵⁴³ *Ibid*, p.42.

⁵⁴⁴ *Ibid*, p.50.

⁵⁴⁵ *Ibid*, p.52.

Reconsideration of Key Northern Ireland Policies and Programmes

The 2012 Report highlighted the relationship between articles 9 and 30.⁵⁴⁶

The Autism Strategy's strategic priority 14 aims to improve access to sport, arts, leisure and other cultural activities.⁵⁴⁷ The Physical and Sensory Disability Strategy and Bamford Action Plan 2012-2015 do not explicitly mention Article 30. The Fit and Well Public Health Strategy 2012-2022 has as one of its targeted actions to increase the number of young people and adults with learning disabilities participating in sport and recreation and leisure activities,⁵⁴⁸ while the Sport Matters Strategy aims to deliver an increase of 6% in the number of people with a disability who regularly participate in sport and physical recreation by 2019 (from the 2011 baseline). The most recent progress report for the Sport Matters Strategy suggests that there will be some delay in achieving this target.⁵⁴⁹

Stakeholder engagement

Article 30 was not specifically mentioned during the Stakeholder consultation events.

Any Significant Gaps or Shortfalls in Northern Ireland Public Policy and Programmes

People with a disability are less likely to attend (59%) or participate in (25%) arts events than people without a disability (87% and 31% respectively)⁵⁵⁰. The issues experienced by people with disabilities in accessing leisure services in Belfast have been highlighted in a recent research report.⁵⁵¹ Ultimately, there is a need for more information and research on the extent to which disabled people are able to access

⁵⁴⁶ Harper, C, S McClenahan, B Byrne & H Russell (2012) 'Disability Programmes and Policies: How Does Northern Ireland Measure Up?', Belfast: Equality Commission for Northern Ireland, p.248.

⁵⁴⁷ Department of Health, Social Services & Public Safety (2013) 'The Autism Strategy (2013-2020) and Action Plan (2013-2016)', Belfast: DHSSPS.

⁵⁴⁸ Department of Health, Social Services & Public Safety (2012) 'Fit and Well Changing Lives 2012-2022', Belfast: DHSSPS, p.60.

⁵⁴⁹ Department of Culture, Arts & Leisure (2013) 'Sport Matters Implementation Group Progress Report (4) (October 2012-September 2013)', Belfast: DCAL.

⁵⁵⁰ Department of Culture, Arts & Leisure (2012) 'Section 75 Annual Report to the Equality Commission NI 2012-2013', Belfast: DCAL, pp.59-60.

⁵⁵¹ Disability Action (2013) 'The experiences of people with disabilities socialising in Belfast', Belfast: Disability Action and Policing and Safety Community Partnership.

cultural life, recreation, leisure and sport; however the baseline audit of accessibility to services in Northern Ireland for people with a disability is a welcome start.⁵⁵²

7.27 Article 31: Statistics and data collection

Jurisprudence of the UN Committee on the Rights of Persons with Disabilities

A number of key themes have emerged from the UN Committee's Concluding Observations to date:

- Systemize the collection, analysis and dissemination of statistics and data;⁵⁵³
- Capture data which can be disaggregated by age, gender, type of disability, place of residence, and cultural background;⁵⁵⁴ and
- Develop indicators with DPOS, particularly around women and children.⁵⁵⁵

⁵⁵² Adapt NI with BMKent consulting (2013) 'Audit, Benchmark, Change State of disability access report 2013: A baseline audit of accessibility to services in Northern Ireland for people with a disability', Belfast: Equality Commission for Northern Ireland, available at <http://www.equalityni.org/Research-investigations>.

⁵⁵³ CRPD/C/ARG/CO/1 Concluding Observations: Argentina, at para 50; CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 51; CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 64; CRPD/C/HUN/CO/1 Concluding Observations: Hungary, at para 47; CRPD/C/ESP/CO/1 Concluding Observations: Spain, at para 50; CRPD/C/PER/CO/1 Concluding Observations: Peru, at para 47; and CRPD/C/TUN/CO/1 Concluding Observations: Tunisia, at para 37.

⁵⁵⁴ CRPD/C/ARG/CO/1 Concluding Observations: Argentina, at para 50; CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 54; CRPD/C/SLV/CO/1 Concluding Observations: El Salvador, at para 64; CRPD/C/HUN/CO/1 Concluding Observations: Hungary, at para 50; CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 72; CRPD/C/ESP/CO/1 Concluding Observations: Spain, at para 50; and CRPD/C/TUN/CO/1 Concluding Observations: Tunisia, at para 37.

⁵⁵⁵ CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 54; CRPD/C/AUT/CO/1 Concluding Observations: Austria, at para 51; CRPD/C/HUN/CO/1 Concluding Observations: Hungary, at para 49; CRPD/C/PRY/CO/1 Concluding Observations: Paraguay, at para 72-73; CRPD/C/PER/CO/1 Concluding Observations: Peru, at para 47; CRPD/C/ESP/CO/1 Concluding Observations: Spain, at para 50-52; and CRPD/C/TUN/CO/1 Concluding Observations: Tunisia, at para 37-38.

The UK State Party Report and the NI Executive Contribution to it

The Northern Ireland Executive's Contribution to the UK Government Report did not cover Article 31⁵⁵⁶ and no relevant information on statistics and data collection in NI is presented in the UK State Party Report.⁵⁵⁷

Northern Ireland Disability Strategy 2012-2015

The Disability Strategy pledges a commitment from the Northern Ireland Executive to 'ensuring that data sources are identified and developed to measure the outcomes of this strategy and more widely the UNCRPD'.⁵⁵⁸ It also states that the Executive will establish mechanisms to collect current data that can be disaggregated and will be made available to the public.⁵⁵⁹ There are no references to Article 31 in relation to the commitments made in the Programme for Government.

Reconsideration of key Northern Ireland policies and programmes

Article 31 was identified as a key cross-cutting area for action in the last report⁵⁶⁰ and stakeholders have continued to view it as a priority. OFMDFM have sought to develop a set of key indicators to aid monitoring of the Disability Strategy using the data collected from the Northern Ireland Survey of People with Activity Limitations and Disabilities (NISALD) in 2006 as a baseline.⁵⁶¹ To support this, a subgroup on monitoring and evaluating the Strategy has been established. The Baseline Indicator Set document notes that as the UNCRPD was not ratified in the UK until 2009

⁵⁵⁶ Northern Ireland Executive (2011) 'Northern Ireland Executive's Contribution to the UK Government Report to the United Nations Committee', at 9-11, available at http://www.ofmdfmi.gov.uk/executives_contribution_to_the_uk_government_report_to_the_united_nations_committee_-_amended.pdf (Last visited 17 January 2014).

⁵⁵⁷ CRPD/C/GBR/1, 'Consideration of Reports Submitted by States Parties Under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland', 24 November 2011.

⁵⁵⁸ Office of the First Minister and Deputy First Minister (2013) 'The Disability Strategy 2012-2015', Belfast: OFMDFM, p.31.

⁵⁵⁹ *Ibid*, p. 9 & 31.

⁵⁶⁰ Harper, C, S McClenahan, B Byrne & H Russell (2012) 'Disability Programmes and Policies: How Does Northern Ireland Measure Up?', Belfast: Equality Commission for Northern Ireland, p.5.

⁵⁶¹ OFMDFM (2013, February) 'Research Branch Monitoring and Evaluation of the Disability Strategy 2012-2015: Baseline Indicator Set'.

(several years after the collection of the data), the survey does not provide information on all the issues now subject to monitoring, and specifically to all the strategic priorities identified within the Disability Strategy. The document notes that ‘One of our main tasks over the next year will be to identify appropriate monitoring arrangements, especially for those areas on which we currently have no adequate data’.⁵⁶² OFMDFM have proposed that NISALD should be allowed to be re-run to allow collection of a comparable dataset at the end of the Disability Strategy period.⁵⁶³

The information presented in the Baseline Indicator Set is limited and suggests that there is no relevant data for strategic priorities 1, 2, 7,9,10 and 12.⁵⁶⁴ The data presented for the remaining strategic priorities remain limited and do not allow for comprehensive monitoring of the UNCRPD.⁵⁶⁵

The third report from the 2011 Census for Northern Ireland indicates that 40.3% of all households had one or more persons with a long term health problem or disability. Further, the type of ‘long term condition’ of all those ‘usually resident’ in Northern Ireland are as follows:

*Table 1: Type of Long-Term Condition*⁵⁶⁶

Long term condition	Percentage of all usual residents with long term condition
Deafness or partial hearing loss	5.1
Blindness or partial sight loss	1.7
Communication difficulty	1.7
A mobility or dexterity difficulty	11.4

⁵⁶² Ibid, p.7.

⁵⁶³ Ibid, p.7.

⁵⁶⁴ Strategic priority 1: increase opportunity for people with disabilities to influence policies and programmes; Strategic priority 2: improve interaction between all sectors to achieve the social inclusion of people with disabilities; Strategic priority 7: accessibility; Strategic priorities 9,10 and 12: children, young people and family.

⁵⁶⁵ Other relevant data that continues to be presented on a regular basis include: Northern Ireland Hospital Statistics: Mental Health and Learning Disability (2012/13), available at http://www.dhsspsni.gov.uk/mhld_annual_report_2012-13.pdf.

⁵⁶⁶ Table KS302NI: Type of Long-Term Condition, Third Report from the Census of Northern Ireland Population 2012.

A learning, intellectual, social or behavioural difficulty	2.2
An emotional, psychological or behavioural difficulty	5.8
Long term pain or discomfort	10.1
Shortness of breath or difficulty breathing	8.7
Frequent periods of confusion or memory loss	2.0
A chronic illness	6.6
Other condition	5.2
No condition	68.6

However, this is not based on a UNCRPD definition of disability

Stakeholder engagement

Article 31 continues to be viewed as a significant cross-cutting issue by stakeholders. Those who participated in the stakeholder events noted that there is a need for a clear policy on monitoring and implementation of the Disability Strategy based on recording of the appropriate statistics and data. It was suggested that the lack of data collection systems in place was an issue across disability policies generally, and one which prevented progress under various policies from being effectively measured and monitored. Further, stakeholders reported that disaggregated data was crucial to gaps to be identified and meaningful solutions implemented.

Participants at the Expert Seminar also emphasised the lack of data with respect to the disability strategy and highlighted issues with obtaining access to relevant data. It was also noted that there was lack of data on disabled children and young people and a lack of data on disabled young people in further education. It was suggested that the lack of available data had negative implications for the development of evidence-based policy with respect to disability in Northern Ireland.

Any significant gaps or shortfalls in Northern Ireland public policy and programmes

The findings from the 2012 Report remain relevant and more robust data that can be disaggregated is needed.⁵⁶⁷ There continues to be a need for systematic collection, analysis and dissemination of data, including (qualitative and quantitative) data reflecting the diversity of disabled people's lived experiences in Northern Ireland. This is particularly important in ensuring that the Disability Strategy along with other policies and programmes which impact on disabled people's lives can be effectively monitored.

8. Conclusion: Key areas where there are shortfalls in public policies and programmes in Northern Ireland

The present report provides a comprehensive overview of a range of socio-economic, policy and programme developments since the initial 'Programmes and Policies' research published by ECNI early in 2012. In so doing it highlights a number of shortfalls in public policy and programme delivery in Northern Ireland relative to the key requirements of the UNCRPD, highlighting any key issues and barriers to full implementation.

There are a range of articles of the UNCRPD where there are shortfalls in delivery in Northern Ireland with respect to policies and programmes.

Articles of the UNCRPD where there are shortfalls

This research has found that there continues to be gaps in delivery in the three priority areas identified in the 2012 Report, namely with respect to the following articles:

- Awareness-raising (Article 8)
- Participation in political and public life (Article 29); and

⁵⁶⁷ Harper, C, S McClenahan, B Byrne & H Russell (2012) 'Disability Programmes and Policies: How Does Northern Ireland Measure Up?', Belfast: Equality Commission for Northern Ireland, p.269.

- Access to information (Article 9 and 21) and Statistics and data collection (Article 31).⁵⁶⁸

In addition, substantive shortfalls have been identified with respect to the following articles:

- Article 5: Equality and non-discrimination
- Article 12: Equal recognition before the law
- Article 19: Living independently and being included in the community
- Article 24: Education
- Article 25: Health
- Article 28: Adequate standard of living and social protection

Information about the shortfalls with respect to these articles and the reasoning behind this is provided in the relevant sections of the body of the present report.

Northern Ireland Policy Developments which fall short of the requirements of the UNCRPD

The project team have identified key policy and programme areas which it is felt have significant shortfalls (or potentially so) in Northern Ireland with respect to the UNCRPD. In doing so, the same three criteria for the identification of key areas have been applied as were applied in the 2012 research.⁵⁶⁹ These criteria are:

- The issue is one of the most intractable or persistent and/or one on which little progress is being made;
- The issue is disproportionately damaging i.e. the group affected may be small but the impact substantial; and/or
- The 'direction of travel' is negative i.e. existing evidence shows a worsening experience for disabled people.

⁵⁶⁸ See page 24 for additional information.

⁵⁶⁹ Harper, C, S McClenahan, B Byrne & H Russell (2012) 'Disability Programmes and Policies: How Does Northern Ireland Measure Up?', Belfast: Equality Commission for Northern Ireland, pp. 261-63.

The key areas of Northern Ireland policy development which have been identified are the following:

- The Transforming Your Care policy which aims to reform health and social care in Northern Ireland;
- The Northern Ireland Mental Capacity Bill;
- The Welfare Reform programme; and
- The Special Educational Needs and Inclusion Review.

Each of these will be discussed in turn in the following section which should be read in the light of the material on the relevant articles in chapter 7 of the present report.

Transforming Your Care

Transforming Your Care is likely to have a significant impact on the lives of a great many people with disabilities in Northern Ireland. It engages a range of articles of the UNCRPD, including:

- Article 10: Right to life;
- Article 19: Living independently and being included in the community;
- Article 25: Health; and
- Article 26: Habilitation and rehabilitation.

Given the concerns identified in the 2012 Report which have as yet not been adequately addressed through significant progress, the introduction of such a wide ranging reform of health and social care services is a cause for concern. It has the potential to both impact on a very large number of disabled people and for that impact to be substantial for many individuals. In large measure Transforming Your Care engages the social and economic right to health which is progressively realisable within available resources. This means that ‘available resources’ constitutes a valid limit on the extent to which the right can be realised at the present moment, but it cannot mean a ‘falling back’ or retrogression with respect to the right.

Northern Ireland Mental Capacity Bill

The Northern Ireland Mental Capacity Bill is likely to have significant impact on the lives of a great many people with disabilities in Northern Ireland. It engages a range of articles of the UNCPRD, including:

- Article 5: Equality and non-discrimination;
- Article 7: Children with disabilities;
- Article 8: Awareness-raising;
- Article 12: Equal recognition before the law;
- Article 14: Liberty and security of person;
- Article 16: Freedom from exploitation, violence and abuse;
- Article 17: Protecting the integrity of the person;
- Article 19: Living independently and being included in the community; and
- Article 25: Health.

Attitudes towards people with disabilities in Northern Ireland remain paternalistic and full implementation of Article 12 on *Equal recognition before the law* is a key delivery for liberating people with disabilities from lesser lives as a result of such paternalistic attitudes. Having its origins in the Bamford Review of Mental Health and Learning Disability,⁵⁷⁰ the Mental Capacity Bill seeks to challenge the paternalistic attitudes currently enshrined in mental health law. Leaving aside questions of the requirements of Article 12 for law reform (as these remain a matter of deep dispute), it is clear that Article 12 requires a range of policies and programmes, including in connection with the implementation of the Mental Capacity Bill. For the Mental Capacity Bill to be a means of promoting, protecting and fulfilling the rights of people with disabilities in Northern Ireland, such programmes need to be adequately resourced. One such example of a specific programme is the independent mental capacity advocacy service which the Mental Capacity Bill requires be available in certain circumstances. However, general resourcing is also important to provide supported decision making services to protect and promote the rights of disabled people to make decisions for themselves. Without the proper resourcing of such

⁵⁷⁰ See in particular the Department of Health, Social Services & Public Safety (2007) 'Bamford Review Report: A comprehensive legal framework', available at: <http://www.dhsspsni.gov.uk/legal-issue-comprehensive-framework.pdf>.

services, it is possible that the Mental Capacity Bill will create a worsening experience for disabled people as they will be left more to make decisions themselves in all areas of their life, yet they will not be receiving the support necessary to enable them to realise their mental capacity to make such decisions.

Welfare Reform

The Welfare Reform programme is likely to have significant impact on the lives of a great many people with disabilities in Northern Ireland. With its clear emphasis on reducing welfare expenditure and thereby potentially causing deep negative impact on the income levels of many disabled people, its implementation engages a very wide range of articles of the UNCRPD, including:

- Article 5: Equality and non-discrimination;
- Article 8: Awareness-raising;
- Article 19: Living independently and being included in the community;
- Article 20: Personal mobility;
- Article 24: Education;
- Article 28: Adequate standard of living and social protection;
- Article 29: Participation in political and public life; and
- Article 30: Participation in cultural life, recreation, leisure and sport.

Full implementation of Article 28 on *Adequate standard of living and social protection* is clearly critical for many aspects of people with disabilities' lives. The deep negative impact that the reforms will potentially have directly impact on the ability to enjoy other rights – in particular, the ability to enjoy the right to independent living. It is concerning that, despite the evidence provided in the present report, the impact of the potential reforms is likely to be greater for people with disabilities in Northern Ireland, not least given the poorer levels of health and higher numbers of people with disabilities in the population. There is thus a risk that not only is the Welfare Reform programme potentially retrogressive but that it will have a disproportionate impact in Northern Ireland compared to the rest of the United Kingdom. Consideration should be given to the additional costs of disability that can emerge as well as any additional implications that may arise due to the intersection between disability and childhood

(that is, on families with children with disabilities) and the intersection between disability and gender (that is, on women with disabilities). It is likely that the UN Committee will express concerns about the potentially retrogressive effect of the Welfare Reform programme on people with disabilities.

Review of Special Educational Needs and Inclusion

There is no evidence of a move towards inclusive education for children with disabilities in Northern Ireland education policy as required by Article 24 of the UNCPRD. This is in spite of the concern raised in the 2012 Report that the Department of Education's policy proposals with respect to Special Educational Needs and Inclusion would weaken the existing entitlements of children with disabilities.⁵⁷¹ The continued segregation of children with disabilities engages a range of rights under the UNCPRD, including:

- Article 5: Equality and non-discrimination;
- Article 7: Children with disabilities;
- Article 8: Awareness-raising;
- Article 9: Accessibility;
- Article 19: Living independently and being included in the community;
- Article 23: Respect for home and the family;
- Article 24: Education; and
- Article 27: Work and employment.

The significance of the policy proposals should be recognised not just in and of itself but for their potential impact on the range of rights set out above. This is because education is both a right in and of itself, and a 'passkey' to the enjoyment of other rights and freedoms.⁵⁷² Children and young people with disabilities continue to face extensive barriers in their quest for educational attainment and fulfilment. Article 24:

⁵⁷¹ Harper, C, S McClenahan, B Byrne & H Russell (2012) 'Disability Programmes and Policies: How Does Northern Ireland Measure Up?' Belfast: Equality Commission for Northern Ireland, pp.184-195.

⁵⁷² United Nations (2001) 'UN E/CN.4/2001/52 Annual report of the Special Rapporteur on the right to education', New York: United Nations.

Education, clearly requires States to guarantee a right to inclusive education. It is important that this right does not become exclusionary or inconsistent in its applicability to and between children and young people with disabilities. Inclusive education needs to be appropriately resourced – in both financial and human terms. It is also important that teachers are provided with training and that children and young people with disabilities are able to participate in the development and implementation of inclusive education policies. In light of this, there is a risk that the existing policy proposals will dilute existing entitlements and exacerbate existing barriers for children and young people with disabilities through, for example, the selective nature of CSPs, the lack of meaningful involvement of children and young people in the development of the policy proposals, and differentials rights to transitions planning service – all of which in terms of the UNCRPD would mean retrogression with respect to the human right to education of children with disabilities in Northern Ireland.

The Northern Ireland 'A strategy to improve the lives of people with disabilities: 2012-2015'

The present report has also highlighted the extent to which the articles of the UNCRPD are addressed by the Disability Strategy. The aim of the Strategy is to help Northern Ireland fulfil its obligations under the UNCRPD 'by establishing a framework to implement the UNCRPD.'⁵⁷³ However there are a number of issues that make this problematic which are highlighted below.

The Disability Strategy defines itself with reference to the 'Report of the Promoting Social Inclusion Working Group on Disability' (PSI) which was effectively developed prior to the UK's ratification of the UNCRPD.⁵⁷⁴ The Disability Strategy thus effectively rests on two foundations: the PSI and UNCRPD. This means that it is not

⁵⁷³ Office of the First Minister and Deputy First Minister (2013) 'A Strategy to improve the lives of people with disabilities 2012-2015', Belfast: OFMDFM, p.6. The PSI group was established in November 2004 and presented its report on 3rd December 2009.

⁵⁷⁴ Office of the First Minister and Deputy First Minister (2009) 'Report of the Promoting Social Inclusion Working Group on Disability', Belfast: OFMDFM.

always sufficiently or primarily focused on the UNCRPD to be considered a strategy for the implementation of the UNCRPD.

The Disability Strategy also notes that:

‘The UNCRPD also makes provision for women with disabilities. **Article 6** states that women and girls with disabilities experience multiple discrimination and that appropriate measure must be taken to ensure that women with disabilities are able to fully enjoy the rights and freedom as set out in the UNCRPD’.⁵⁷⁵

However, no reference is made to Article 6 on *Women with disabilities* in the Disability Strategy’s table outlining how the NI Executive was meeting their obligations under the UNCRPD. A similar issue arises with respect to Article 7 on *Children with disabilities* which receives only brief references in the Appendix. It is noteworthy that children with disabilities receive very little direct consideration throughout the Strategy and this is undoubtedly related to the failure to adequately consider the implications of Article 7 for all of the substantive obligations and rights contained in the UNCRPD.

Article 10 on the *Right to life* is not mentioned in the Disability Strategy: a fact that demonstrates how inadequate it is as a strategy for implementing the UNCRPD. This lack of concern for key human rights is further underlined by the lack of reference to Article 17 on *Protecting the integrity of the person*.

In general, the Appendix of the Disability Strategy reads as if the articles of the UNCRPD have been allocated to Programme for Government Commitments and existing or planned programmes without any consideration of the actual obligations and rights contained in those articles. The connection between the PfG Commitments or programmes and particular articles of the UNCRPD is weak, unclear or, in some cases, not actual.⁵⁷⁶ To deliver on the obligations of the NI Executive with respect to the UNCRPD, the Disability Strategy should specifically address those obligations and rights. Simply referencing general programmes and Commitments to article numbers of the UNCRPD will not necessarily generate

⁵⁷⁵ Office of the First Minister and Deputy First Minister (2013) ‘A Strategy to improve the lives of people with disabilities 2012-2015’, Belfast: OFMDFM, p.20.

⁵⁷⁶ See the consideration of articles 5-31 in chapter 7 above.

policies and programmes likely to deliver on the UNCRPD: the Disability Strategy should link actions to articles, not articles to actions. No further actions specific to each article are identified and it is not clear how each strategic priority is to be achieved in practice. There is a significant risk that the Disability Strategy will appear to be grounded in the rights and obligations of the UNCRPD, when in fact it is not. The appearance of respect for human rights without the substance is not a desirable situation, nor one which the UN Committee on the Rights of Persons with Disabilities is likely to welcome.⁵⁷⁷

Concluding comments

The UN Committee on the Rights of Persons with Disabilities has begun the process of elaborating upon the meaning of the obligations and provisions in the UNCRPD. This will continue to evolve as more States Parties are examined and general comments developed.

This research has provided an overview of the current state of play in Northern Ireland with respect to policies and programmes. In so doing it has taken explicit account of both the UNCRPD articles and the subsequent observations made by the UN Committee. Ultimately, the research has identified a range of shortfalls in delivery in Northern Ireland relative to the UNCRPD. It is clear that whilst there are a range of ways in which States Parties can realise their obligations, any developing or emerging policies and programmes should not be retrogressive in nature.

The evidence base that this report provides will assist the Independent Mechanism for Northern Ireland in its engagement with the examination of the United Kingdom by the UNCRPD in 2014 and 2015. It is hoped that the shortfalls identified herein are addressed in advance of the UK's second examination so that the rights of all disabled people in Northern Ireland can be fully respected, protected and fulfilled.

⁵⁷⁷ It should be noted that this analysis reflects an analysis of articles 5 to 31 as discussed in chapter 7 above.

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Appendix 1: Glossary of terms

Committee on the Rights of Persons with Disabilities/ the UN Committee

The body of experts responsible for monitoring the implementation of the UNCRPD. The UN Committee on the Rights of Persons with Disabilities currently holds two sessions a year. Members are elected for a term of four years by States parties in accordance with article 34 of the UNCRPD; *Committee on the Rights of Persons with Disabilities*. Members serve in their personal capacity and may be re-elected if nominated. Eighteen members sit on the UN Committee.

Concluding Observations

The observations and recommendations are issued by a treaty body after consideration of a State Party's Report. Concluding observations are meant to be widely publicised in the State party and to serve as the basis for a national debate on how to improve the enforcement of the provisions of the UNCRPD. Governments are expected to implement the recommendations contained therein.

General Comment

A treaty body's interpretation of the content of human rights provisions. General comments often seek to clarify the reporting duties of State parties with respect to certain provisions and suggest approaches to implementing treaty provisions. The UN Committee on the Rights of Persons with Disabilities has adopted two general comments to date: General Comment 1 on Article 12: *Equal Recognition before the law*; and General Comment 2 on Article 9: *Accessibility*. Both were adopted by the UN Committee on 11 April 2014.

Northern Ireland contribution to the Government Report

As Northern Ireland is part of the UK, the Northern Ireland Executive is required to contribute to the UK Government report. The Northern Ireland contribution sets out

what the Northern Ireland Executive has done to implement the UNCPRD in Northern Ireland.

Ratification

The act whereby a State establishes its consent to be bound by a treaty. Most treaties allow for States to express their consent to be bound first by signature subject to ratification. Signing a treaty allows States time to seek approval for the treaty at the domestic level and to enact any legislation necessary to implement the treaty domestically, prior to undertaking the legal obligations under the treaty at the international level, and which it will do through the act of 'ratification'. For example, the UK signed the UNCPRD on 30 March 2007 and ratified it on 8 June 2009.

Reservation

A reservation is a statement made by a State by which it purports to exclude or alter the legal effect of certain provisions of a treaty in their application to that State. A reservation may enable a State to participate in a treaty that it would otherwise be unable or unwilling to participate in. States can make reservations to a treaty when they sign, ratify, accept, approve or accede to it. However, reservations cannot be contrary to the object and purpose of the treaty

State Party

A State that has expressed its consent to be bound by a particular treaty, normally through an act of ratification or accession. This means that the State is bound by the treaty under international law.

State Party Report

A State Party Report is a document which is produced by a State to the United Nations Committee. This report contains information about what a State has done to implement its obligations under a Treaty

Treaty

An international agreement concluded between States and which is governed by international law, Treaties can also be known as a Convention or a Covenant. A treaty is a form of 'hard' law. Examples include the Convention on the Rights of Persons with Disabilities, Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Elimination of Racial Discrimination.

Appendix 2: Summary Paper of Interim Findings for Expert Seminar

Disability Policies and Programmes: How does Northern Ireland Measure Up?

An Update for ECNI

Summary paper of Interim Findings for Expert Seminar on 21 February 2014

Contents

- Context: UNCRPD & Northern Ireland
- Considering the 3 priority areas from the previous research
- Identifying current substantive shortfalls

Context: UNCRPD & Northern Ireland

In 2010, the Equality Commission commissioned a research report on **‘Disability Policies and Programmes: How does Northern Ireland Measure up?’** This Report identified a range of shortfalls in public policy and programmes against the UN Convention on the Rights of Persons with Disabilities (UNCRPD). This research project to update the earlier work is considering whether anything has changed since then.

The UNCRPD was adopted by United Nations General Assembly in December 2006. The UK agreed to be bound by the UNCRPD in 2009.

The UNCRPD aims to:

promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.” (Article 1).

UNCRPD Rights include:

- Equality and non-discrimination
- Accessibility
- Right to life
- Education
- Employment
- Health and Social Security
- Independent living
- Participation in political life
- Participation in cultural, recreation and leisure activities
- Freedom from torture
- Access to justice
- Home and family

How the UNCRPD Works: implementation and monitoring

The Northern Ireland Government is obliged to implement the rights contained in the UNCRPD. How well it is doing so is looked at by the UN Committee on the Rights of Persons with Disabilities.

The UK submitted its initial State party report in 2011 which describes how the UK is putting the UNCRPD into practice. The UK due to be questioned by the Committee on the UK Report in 2015.

Findings from the 2010 Research

The research carried out in 2010 identified a range of shortfalls and gaps in key policies and programmes relevant to the UNCRPD.

It identified 3 key cross cutting areas fundamental to fulfilling requirements of the Convention where there were large shortfalls:

- Awareness-raising (Article 8)
- Participation in Political and public life (Article 29)
- Access to Information and Statistics and Data Collection (Articles 9, 21 and 31)

The current project is interested in what people think about these in 2013. Are these the areas of the UNCRPD which are still most relevant for Northern Ireland today?

Key areas of substantive shortfall as of 2013

The current research project is looking at:

- What are the key policy developments since 2010 and what is their significance with respect to the CRPD?
- What are the **current** substantive shortfalls between policy and programme delivery in NI relative to the UNCRPD?

The current research has identified an initial list of key areas of substantial shortfall of policies and programmes in Northern Ireland.

These key areas relate to the following articles of the UNCRPD:

- Article 5: Equality and non-discrimination
- Article 12: Equal recognition before the law
- Article 24: Education
- Article 25: Health
- Article 28: Adequate standard of living and social protection

For each of these 5 articles of the UNCRPD information is provided below on:

- The UN Committee's views on important policies and programmes
- Relevant Northern Ireland developments in policies and programmes
- Initial Recommendations from the current research on shortfalls between policies and programmes in NI and the UNCRPD

We would like people's views on whether the policies and programmes identified are the most significant to emerge since 2010. We would also like to know what people think about the areas we are suggesting there are the most significant gaps.

Article 5: Equality and non-discrimination

UN Committee views

- The UNCRPD includes a social model of disability
- Anti-discrimination legislation
 - must address intersectional discrimination
 - should cover perceived disability and association with a person with a disability
 - should include a principle of indirect discrimination
- Enforcement of anti-discrimination law

- must include simplified judicial and administrative processes so that complaints can be made
- must involve remedies for breaches of anti-discrimination law which go beyond financial compensation to include remedies to change behaviour

Important NI Policies and Programmes

- Disability Strategy 2012-2015 is silent on legislative reform;
- There have been no Executive proposals to reform disability discrimination law;
- In ‘Strengthening Protection for Disabled People Proposals for Reform’ (March 2012), the ECNI set out its proposals for legislative reform;
- The IMNI produced ‘A Position Paper on the Initial United Kingdom State Party Report’ (January 2013), relying to some extent on the ECNI proposals.

Initial Recommendations on Shortfalls

- Implementation of disability discrimination law in NI through policies and programmes should
 - include a definition of disability based on the social model
 - cover intersectional discrimination
 - include indirect discrimination
 - provide for a revised ‘discrimination arising from disability’ principle
- Enforcement procedures
 - should not include high tribunal fees
 - should include remedies beyond compensation

Article 12: Equal recognition before the law

UN Committee views

- Training at all levels of the state on ‘the recognition of the legal capacity of persons with disabilities;

- Setting up of ‘decision making support services’;
- Gathering of ‘data and information on persons with disabilities who have been declared legally incapable’; and
- Review of ‘all current legislation which is based on a substitute decision-making model that deprives persons with disabilities of their legal capacity’.

Important NI Policies and Programmes

A Public Consultation on the Northern Ireland Mental Capacity Bill is expected in March 2014:

- No information on planned training programmes to support implementation
- No information on services to support decision making
- Project planned by DHSSPS on review of legislation relating to children with mental disabilities

Initial Recommendations on Shortfalls

Policies and programmes should exist in NI which:

- Provide support for independent decision-making;
- Gather data on disabled people subject to the new law;
- Review all legislation relating to legal capacity.

Article 24: Education

UN Committee views

- All students should be provided with required support;
- Decisions on placement should be subject to appeal;
- Allocation of sufficient financial and human resources;
- Targets to increase participation by students with disabilities in all levels of education and training;
- Training teachers and all other educational staff to enable them to work in inclusive educational settings;

- Quality teacher training for people with disabilities

Important NI Policies and Programmes

- Disability Strategy 2012-2015 does not explicitly address inclusive education;
- Special Educational Needs and Inclusion Review
 - Replacement of statements of special educational needs with coordinated support plans;
- There is concern that proposals will lead to reduced level of provision and protection from some children and young people with disabilities.

Initial Recommendations on Shortfalls

- Policies and programmes should exist which ensure that **all** children and young people with disabilities have the same right to required support;
- There should be a right of appeal;
- Transitions planning should be provided for all young people with disabilities;
- Initial Teacher Education should include mandatory disability training (including sign language), and be accessible.

Article 25: Health

UN Committee views

- Access to health, including sexual and reproductive health;
- Gathering statistics so that access to health services can be planned for disabled people;
- Policies should recognise the necessity of free and informed consent for medical procedures, including in mental health;
- Accessibility of public health information, including on HIV&AIDS;
- Targeting of public health information for disabled people;

Important NI Policies and Programmes

- Transforming Your Care: A review of health and social care in Northern Ireland (2011).
- Increasing evidence from England & Wales of differences in health outcomes between disabled and non-disabled people, yet no NI policies and programmes to address this difference.

Initial Recommendations on Shortfalls

- Too early to robustly assess the compliance of policies and programmes emerging from Transforming Your Care with the obligations of the CRPD, but a programme of formal monitoring of its impact on people with disabilities is likely required.
- Policies and programmes should exist to enable measurement of health outcomes for disabled people and address differences.

Article 28: Adequate standard of living and social protection

UN Committee views

- Social security legislation must be inclusive;
- Assessments should be individually based;
- Should be uniform standards;
- Social security legislation must be accessible;
- Public policies and adequate resources are required;
- Measures should be adopted to eliminate barriers.

Important NI Policies and Programmes

- Promotion of Article 28 is strategic priority of Disability Strategy 2012-2015;
- Proposed welfare reform:
 - Introduction of Universal Credit
 - Replacement of DLA for 16-64 year olds with PIP
 - Introduction of bedroom tax

- There is concern that welfare reforms will have a disproportionate impact on disabled people in NI and that it will negatively impact on disabled people's standard of living.

Initial Recommendations on Shortfalls

- Any welfare reforms should include policies and programmes to mitigate the disproportionate impact they will have on disabled people in Northern Ireland;
- Any reforms should follow the social, not medical, model of disability;
- Policies and programmes should monitor the impact of reforms on disabled people's standard of living.

Summary

The **key** areas where there have been significant policy developments since 2010 and where substantive shortfalls appear to exist as of 31 Dec 2013 are:

- Equality and non-discrimination
- Equal recognition before the law
- Education
- Health
- Adequate standard of living

There continues to be shortfalls in the 3 cross-cutting areas identified in the previous report; i.e.

- Awareness-raising,
- Participation in political and public life, and
- Access to information and Statistics and data collection

Appendix 3: Focus group topic guides

Stakeholder event details: 21 January 2014, 2-4pm in Old Staff Common Room, QUB

Target audience: adults with disabilities

- What have been the key policy developments since 2010 and what is their significance with respect to the UNCRPD?
- What are the **current** substantive shortfalls between policy and programme delivery in NI relative to the UNCRPD?
- Are the 3 areas identified in the First Report still relevant today?
- What are the 3 key barriers to disabled people fully participating in society in NI today?
- What are the main issues for disabled people in NI today?
- What would make the biggest difference for disabled people in NI?

Stakeholder event details: 22 January 2014, 2-4pm in Olympia Leisure Centre, Belfast & 24 January 2014, 11am-pm1 in Bayview Resource Centre, Bangor, Co. Down

Target audience: adults with learning disabilities

- What can the Government do to help you the most?
- Are people with a learning disability treated the same way as people that don't have a learning disability?
- Do you live where you want to live?
- Do you feel safe?
- Can you do the things that you want to do?
Can you get the information that you need?
- Are enough people with a disability involved in politics and decision-making in the community?

Stakeholder event details: 24 January 2014, 2-4pm in Old Staff Common Room, QUB

Target audience: representatives from disability organisations

- What have been the key policy developments since 2010 and what is their significance with respect to the UNCRPD?
- What are the **current** substantive shortfalls between policy and programme delivery in NI relative to the UNCRPD?
- Are the 3 areas identified in the First Report still relevant today?
- What are the 3 key barriers to disabled people fully participating in society in NI today?
- What are the main issues for disabled people in NI today?
- What would make the biggest difference for disabled people in NI?

Stakeholder event details: 28 January 2014, 6-8pm at Barnardo's, Armagh

Target audience: children and young people with disabilities

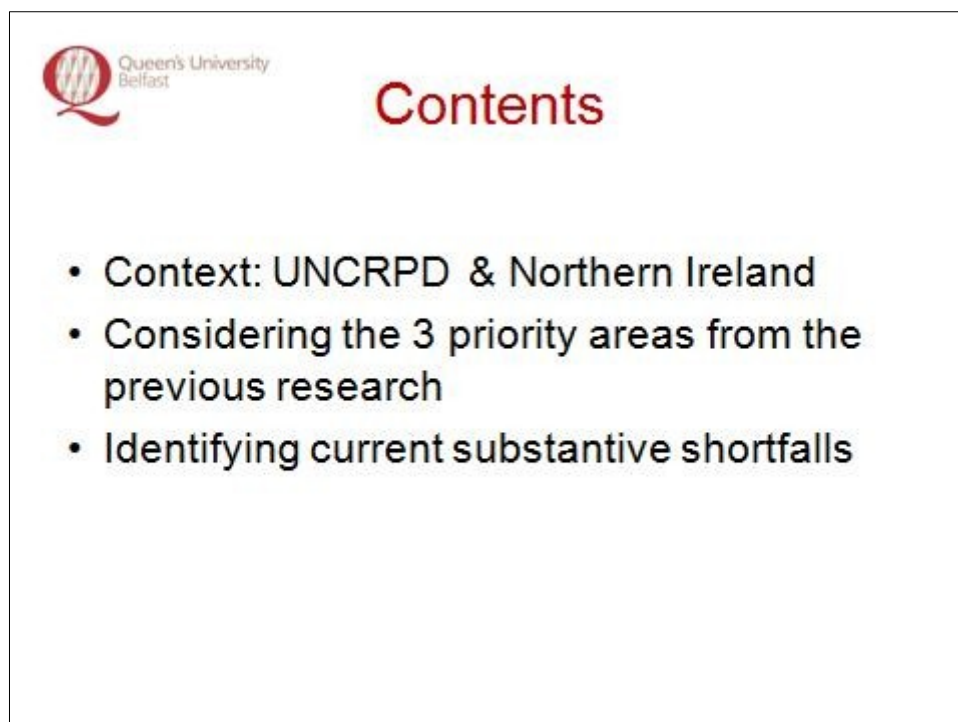
- What rights do you have?
- What rights are most important to you?
- Can you do the things you want to do?
- What could the Government change to make things better?

Appendix 4: Presentation at Expert Seminar


Slide 1



Slide 2




Slide 3



Context

- In 2010, Equality Commission commissioned report **'Disability Policies and Programmes: How does Northern Ireland Measure up?'**
- Identified a range of shortfalls in public policy and programmes against the UN Convention on the Rights of Persons with Disabilities (UNCRPD)
- Has anything changed since then?
- Input to monitoring of UK's progress against UNCRPD

Slide 4



What is the UNCRPD?

- Adopted by United Nations General Assembly December 2006.
- Aim is "to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity." (Article 1)
- Places the spotlight firmly upon the breadth and depth of exclusionary and oppressive practices experienced by disabled people.
- Ratified by UK in 2009.

Slide 5



Rights include:

- Equality and non-discrimination
- Accessibility
- Right to life
- Education
- Employment
- Health and Social Security
- Independent living
- Participation in political life
- Participation in cultural, recreation and leisure activities
- Freedom from torture
- Access to justice
- Home and family

Slide 6



How the CRPD works: Implementation and Monitoring

- Northern Ireland Government obliged to implement the rights contained in the UNCRPD.
- Monitored by the UN Committee on the Rights of Persons with Disabilities.
- UK submitted its initial State party report in 2011.
- Committee due to draft 'List of Issues' for UK at its pre-sessional working group on 10 October 2014.
- UK due to be examined by the Committee in 2015.



Role of Independent Mechanism

- Article 33(2) of the Convention requires State Parties to establish 'a framework, including one or more independent mechanisms...to promote, protect and monitor implementation of the present Convention'.
- The NI Human Rights Commission and the Equality Commission NI have been jointly designated as the Independent Mechanism in NI.
- UKIM intend to produce a 'List of Issues' and Parallel Report for consideration by Committee.



Findings from 2010 Research

- Identified a range of shortfalls and gaps in key policies and programmes relevant to the UNCRPD.
- Identified 3 key cross cutting areas fundamental to fulfilling requirements of the Convention.



Are the priority areas from the 2010 research still important?

- Awareness-raising (Article 8)
- Participation in Public and Political Life (Article 29)
- Access to Information and Statistics and Data Collection (Articles 9, 21 and 31)



Key areas of substantive shortfall as of 2013?

- Article 5: Equality and non-discrimination
- Article 12: Equal recognition before the law
- Article 24: Education
- Article 25: Health
- Article 28: Adequate standard of living and social protection



Issues for consideration

- What are the key policy developments since 2010 and what is their significance with respect to the CRPD?
- What are the **current** substantive shortfalls between policy and programme delivery in NI relative to the UNCRPD?
- Are the 3 areas identified in the First Report still relevant today?



For each of these 8 articles:

- UN Committee views on policies and programmes
- Relevant Northern Ireland developments in policies and programmes
- Initial Recommendations as to areas of shortfall between policies and programmes in NI and the UN Convention on the Rights of People with Disabilities



The 3 priority areas from the previous research



Article 8: Committee Views

- Need for awareness-raising campaigns to counter negative stereotypes and promote the social model of disability in accordance with the CRPD.
- Need to promote education and training on the CRPD.



Article 8: Committee Views

- Need for awareness-raising campaigns to counter negative stereotypes and promote the social model of disability in accordance with the CRPD.
- Need to promote education and training on the CRPD.



Article 8: Recommendations

- Awareness raising needs to be much more systematic
- Awareness-training programmes regarding persons with disabilities and their rights need to be developed
- People with disabilities should be involved in developing awareness raising strategies and programmes



Article 29: Committee Views

- Measures to ensure disabled people can run for public office.
- Support should be provided for those in public office.
- Training and alternative voting options should be offered.
- Increased participation of disability organisations.
- Accessible voting information.



Article 29: Policies and Programmes

- Strategic priority of Disability Strategy but not clear how this is to be achieved in practice.
- 'Disability Action Plans' in place across public bodies contain a range of commitments, but not clear to what extent these have been achieved.
- There continues to be an under-representation of disabled people in public and political life.



Article 29: Recommendations

- Adopt additional measures
- Increase representation of people with disabilities in public office
- Introduce meaningful policy and programme changes, not just the minimum required by law



Article 31: Committee Views

- The need to systemize the collection, analysis and dissemination of statistics and data;
- The need to capture data which can be disaggregated by age, gender, type of disability, place of residence, and cultural background;
- Establish indicators to measure future progress towards the implementation of the CRPD, particularly around gender and children;
- Privacy and confidentiality of data should be guaranteed;
- Criteria used in gathering data should be developed with DPOs and promote a human rights model.



Article 31: Policies & Programmes

- Promotion of Article 31 is not a strategic priority of Disability Strategy 2012-2015;
- The Baseline Indicator Set document was launched by NISRA in February 2013;
- Research measuring NISALD data against the 18 strategic priorities in the Disability Strategy is expected in March 2014;
- There continues to be a lack of appropriate data.



Article 31: Recommendations

- Data collected needs to be disaggregated by age, gender, type of disability, place of residence, and cultural background
- NI Government should collect data that is comparable to the 2006 baseline survey, taking into account the CRPD and the obligations to report on its implementation
- More people with disabilities need to be included in the Monitoring and Evaluation Subgroup on the Disability Strategy



Identifying current substantive shortfalls



Art 5: UN Committee Views

- The UNCPRD includes a social model of disability
- Anti-discrimination legislation
 - must address intersectional discrimination
 - should cover perceived disability and association with a person with a disability
 - should include a principle of indirect discrimination
- Enforcement of anti-discrimination law
 - must include simplified judicial and administrative processes so that complaints can be made
 - must involve remedies for breaches of anti-discrimination law which go beyond financial compensation to include remedies to change behaviour



Art 5: Policies and Programmes

- Disability Strategy 2012-2015 is silent on legislative reform;
- There have been no Executive proposals to reform disability discrimination law;
- In 'Strengthening Protection for Disabled People Proposals for Reform' (March 2012), the ECNI set out its proposals for legislative reform;
- The IMNI produced 'A Position Paper on the Initial United Kingdom State Party Report' (January 2013), relying to some extent on the ECNI proposals.



Art 5: Recommendations

- **Implementation of disability discrimination law in NI through policies and programmes should**
 - include a definition of disability based on the social model
 - cover intersectional discrimination
 - include indirect discrimination
 - provide for a revised 'discrimination arising from disability' principle
- **Enforcement procedures**
 - should not include high tribunal fees
 - should include remedies beyond compensation



Art 12: UN Committee Views

- Training at all levels of the state on 'the recognition of the legal capacity of persons with disabilities';
- Setting up of 'decision making support services';
- Gathering of 'data and information on persons with disabilities who have been declared legally incapable'; and
- Review of 'all current legislation which is based on a substitute decision-making model that deprives persons with disabilities of their legal capacity'.



Art 12: Policies and Programmes

Consultation on NI Mental Capacity Bill expected March 2014:

- No information on planned training programmes to support implementation
- No information on services to support decision making
- Project planned by DHSSPS on review of legislation relating to children with mental disabilities



Art 12: Recommendations

Policies and programmes should exist in NI which:

- Provide support for independent decision-making;
- Gather data on disabled people subject to the new law;
- Review all legislation relating to legal capacity.



Art 24: UN Committee Views

- All students should be provided with required support;
- Decisions on placement should be subject to appeal;
- Allocation of sufficient financial and human resources;
- Targets to increase participation by students with disabilities in all levels of education and training;
- Training teachers and all other educational staff to enable them to work in inclusive educational settings;
- Quality teacher training for people with disabilities



Art 24: Policies and Programmes

- Disability Strategy 2012-2015 does not explicitly address inclusive education;
- Special Educational Needs and Inclusion Review
 - Replacement of statements of special educational needs with coordinated support plans;
- There is concern that proposals will lead to reduced level of provision and protection from some children and young people with disabilities.



Art 24: Policies and Programmes

- Disability Strategy 2012-2015 does not explicitly address inclusive education;
- Special Educational Needs and Inclusion Review
 - Replacement of statements of special educational needs with coordinated support plans;
- There is concern that proposals will lead to reduced level of provision and protection from some children and young people with disabilities.



Art 25: UN Committee Views

- Access to health, including sexual and reproductive health;
- Gathering statistics so that access to health services can be planned for disabled people;
- Policies should recognise the necessity of free and informed consent for medical procedures, including in mental health;
- Accessibility of public health information, including on HIV&AIDS;
- Targeting of public health information for disabled people;



Art 25: Policies and Programmes

- 'Transforming your care: A review of health and social care in Northern Ireland' (2011).
- Increasing evidence from England & Wales of differences in health outcomes between disabled and non-disabled people, yet no NI policies and programmes to address this difference.

Art 25: Recommendations

- Too early to robustly assess the compliance of policies and programmes emerging from 'Transforming Your Care' with the obligations of the CRPD, but a programme of formal monitoring of its impact on people with disabilities is likely required.
- Policies and programmes should exist to enable measurement of health outcomes for disabled people and address differences.

Article 28: UN Committee Views

- Social security legislation must be inclusive;
- Assessments should be individually based;
- Should be uniform standards;
- Social security legislation must be accessible;
- Public policies and adequate resources are required;
- Measures should be adopted to eliminate barriers.



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Article 28: Policies and Programmes


- Promotion of Article 28 is strategic priority of Disability Strategy 2012-2015;
- Proposed welfare reform:
 - Introduction of Universal Credit
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 - Introduction of bedroom tax
- There is concern that welfare reforms will have a disproportionate impact on disabled people in NI and that it will negatively impact on disabled people's standard of living.



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Article 28: Recommendations

- Any welfare reforms should include policies and programmes to mitigate the disproportionate impact they will have on disabled people in Northern Ireland;
- Any reforms should follow the social, not medical, model of disability;
- Policies and programmes should monitor the impact of reforms on disabled people's standard of living.



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Summary

- The **key** areas where there have been significant policy developments since 2010 and where substantive shortfalls appear to exist as of 31 Dec 2013 are:
 - Equality and non-discrimination
 - Equal recognition before the law
 - Education
 - Health
 - Adequate standard of living
- There continues to be shortfalls in the 3 cross-cutting areas identified in the previous report, i.e.
 - Awareness-raising,
 - Participation in public and political life, and
 - Access to information and Statistics and data collection



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What do you think?



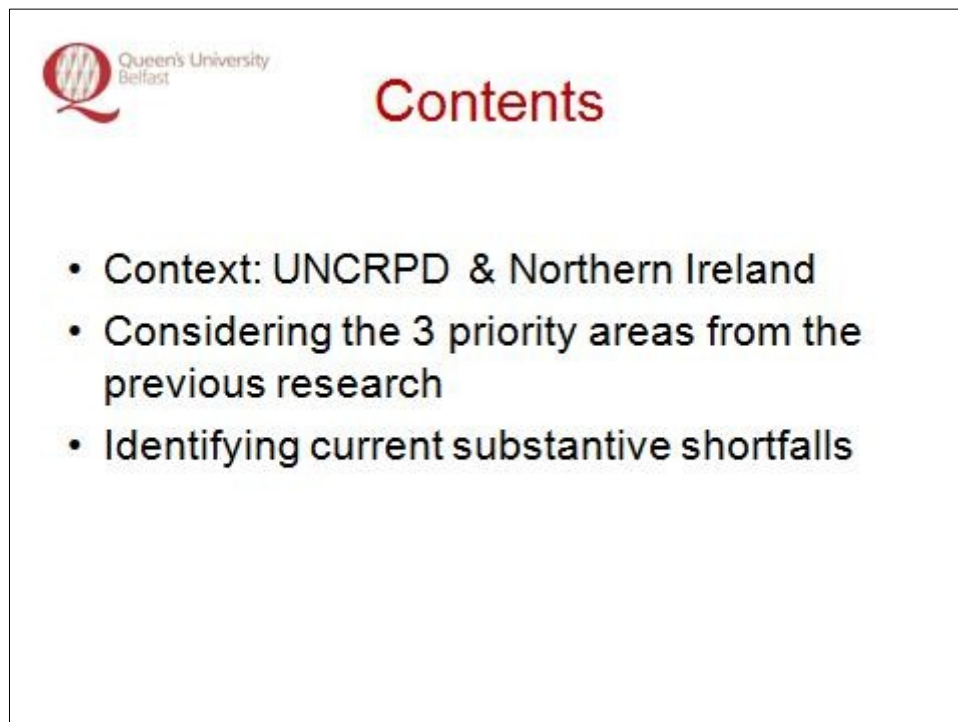
- Do you think the 5 substantive areas identified reflect the main shortfalls in policies and programmes between 2010 and 2013?
- Do you think the 3 original cross-cutting areas still remain important today?
- Are there other significant policy and programme areas where shortfalls exist that you think we should consider?

Appendix 5: Presentation at Derry / Londonderry consultation event

Slide 1



Slide 2




Slide 3



Context

- In 2010, Equality Commission commissioned report **'Disability Policies and Programmes: How does Northern Ireland Measure up?'**
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- Has anything changed since then?
- Input to monitoring of UK's progress against UNCRPD

Slide 4



What is the UNCRPD?

- Adopted by United Nations General Assembly December 2006.
- Aim is "to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity." (Article 1)
- Places the spotlight firmly upon the breadth and depth of exclusionary and oppressive practices experienced by disabled people.
- Ratified by UK in 2009.

Slide 5



Rights include:

- Equality and non-discrimination
- Accessibility
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- Education
- Employment
- Health and Social Security
- Independent living
- Participation in political life
- Participation in cultural, recreation and leisure activities
- Freedom from torture
- Access to justice
- Home and family

Slide 6



How the CRPD works: Implementation and Monitoring

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- Committee due to draft 'List of Issues' for UK at its pre-sessional working group on 10 October 2014.
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Role of Independent Mechanism

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- UKIM intend to produce a 'List of Issues' and Parallel Report for consideration by Committee.



Findings from 2010 Research

- Identified a range of shortfalls and gaps in key policies and programmes relevant to the UNCRPD.
- Identified 3 key cross cutting areas fundamental to fulfilling requirements of the Convention.

Slide 9



Are the priority areas from the 2010 research still important?

- Awareness-raising (Article 8)
- Participation in Public and Political Life (Article 29)
- Access to Information and Statistics and Data Collection (Articles 9, 21 and 31)

Slide 10



Key areas of substantive shortfall as of 2013?

- Article 5: Equality and non-discrimination
- Article 12: Equal recognition before the law
- Article 24: Education
- Article 25: Health
- Article 28: Adequate standard of living and social protection




Issues for consideration

- What are the key policy developments since 2010 and what is their significance with respect to the CRPD?
- What are the **current** substantive shortfalls between policy and programme delivery in NI relative to the UNCRPD?
- Are the 3 areas identified in the First Report still relevant today?



The 3 priority areas from the previous research



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Article 8: Policies & Programmes

- Awareness-raising is a theme in the Disability Strategy 2012-2015 (strategic priorities 3 & 4) & in The Autism Strategy (2013 – 2020) and Action Plan (2013 – 2016) (strategic priorities 1 & 2)
- There does not appear to be systematic awareness-raising programmes in place to raise awareness of disability throughout society and the rights of people with disabilities
- Lack of awareness continues to be significant issue in 2014



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Article 8: Recommendations

- Awareness raising needs to be much more systematic
- Awareness-training programmes regarding persons with disabilities and their rights need to be developed
- People with disabilities should be involved in developing awareness raising strategies and programmes



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Article 29: Policies and Programmes

- Strategic priority of Disability Strategy but not clear how this is to be achieved in practice.
- 'Disability Action Plans' in place across public bodies contain a range of commitments, but not clear to what extent these have been achieved.
- There continues to be an under-representation of disabled people in public and political life.



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Article 29: Recommendations

- Adopt additional measures
- Increase representation of people with disabilities in public office
- Introduce meaningful policy and programme changes, not just the minimum required by law




Article 31: Policies & Programmes

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Identifying current substantive shortfalls



Art 5: Policies and Programmes

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- **Enforcement procedures**
 - should not include high tribunal fees
 - should include remedies beyond compensation

Art 12: Policies and Programmes

Consultation on NI Mental Capacity Bill expected March 2014:

- No information on planned training programmes to support implementation
- No information on services to support decision making
- Project planned by DHSSPS on review of legislation relating to children with mental disabilities



Art 12: Recommendations

Policies and programmes should exist in NI which:

- Provide support for independent decision-making;
- Gather data on disabled people subject to the new law;
- Review all legislation relating to legal capacity.



Art 24: Policies and Programmes

- Disability Strategy 2012-2015 does not explicitly address inclusive education;
- Special Educational Needs and Inclusion Review
 - Replacement of statements of special educational needs with coordinated support plans;
- There is concern that proposals will lead to reduced level of provision and protection from some children and young people with disabilities.

Art 24: Recommendations

- Policies and programmes should exist which ensure that **all** children and young people with disabilities have the same right to required support;
- There should be a right of appeal;
- Transitions planning should be provided for all young people with disabilities;
- Initial Teacher Education should include mandatory disability training (including sign language), and be accessible.

Art 25: Policies and Programmes

- 'Transforming your care: A review of health and social care in Northern Ireland' (2011).
- Increasing evidence from England & Wales of differences in health outcomes between disabled and non-disabled people, yet no NI policies and programmes to address this difference.

Art 25: Recommendations

- Too early to robustly assess the compliance of policies and programmes emerging from 'Transforming Your Care' with the obligations of the CRPD, but a programme of formal monitoring of its impact on people with disabilities is likely required.
- Policies and programmes should exist to enable measurement of health outcomes for disabled people and address differences.

Article 28: Policies and Programmes

- Promotion of Article 28 is strategic priority of Disability Strategy 2012-2015;
- Proposed welfare reform:
 - Introduction of Universal Credit
 - Replacement of DLA for 16-64 year olds with PIP
 - Introduction of bedroom tax
- There is concern that welfare reforms will have a disproportionate impact on disabled people in NI and that it will negatively impact on disabled people's standard of living.

Article 28: Recommendations

- Any welfare reforms should include policies and programmes to mitigate the disproportionate impact they will have on disabled people in Northern Ireland;
- Any reforms should follow the social, not medical, model of disability;
- Policies and programmes should monitor the impact of reforms on disabled people's standard of living.

Summary

- The **key** areas where there have been significant policy developments since 2010 and where substantive shortfalls appear to exist as of 31 Dec 2013 are:
 - Equality and non-discrimination
 - Equal recognition before the law
 - Education
 - Health
 - Adequate standard of living
- There continues to be shortfalls in the 3 cross-cutting areas identified in the previous report; i.e.
 - Awareness-raising,
 - Participation in public and political life, and
 - Access to information and Statistics and data collection

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What do you think?



- Do you think the 5 substantive areas identified reflect the main shortfalls in policies and programmes between 2010 and 2013?
- Do you think the 3 original cross-cutting areas still remain important today?
- Are there other significant policy and programme areas where shortfalls exist that you think we should consider?

